AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

10–22–03 Wednesday
Vol. 68 No. 204 Oct. 22, 2003

Pages 60281–60616

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM268, Special Conditions No. 25–252–SC]

Special Conditions: Cessna Aircraft Company Cessna Model 500 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Aircraft Company Cessna Model 500 airplanes modified by Honeywell International, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Honeywell RVSM (reduced vertical separation minimum)-capable AM–250 electronic barometric altimeters. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 14, 2003. Comments must be received on or before November 21, 2003.

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. NM268, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM268.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay certification of the airplane 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; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

If you want the FAA to acknowledge receipt of your comments on this proposal, 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 June 12, 2003, Honeywell International, Inc., 23500 W. 105th St., Olathe, KS 66061, applied for a supplemental type certificate (STC) to modify Cessna (Citation) Model 500 airplanes. This model is currently approved under Type Certificate No. A22CE. The Cessna Model 500 airplanes are executive type transports that have two aft mounted turbine engines, a minimum passenger load of 9 passengers, and a maximum operating speed of 260 to 287 knots, depending on altitude. The modification, under one supplemental type certificate (STC) project, incorporates the installation of dual Honeywell RVSM-capable AM–250 electronic barometric altimeters.

The dual Honeywell AM–250 barometric altimeters provide the aircraft baro-corrected altitude information, also corrected for static source error (SSE), which enables the aircraft to be capable of RVSM operations. The dual AM–250 barometric altimeters replace the existing pilot and copilot pneumatic altimeters. Since the AM–250 altimeters use electronics to transmit altimeter data to the pilots, as well as to other equipment, they may be susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF). This disruption of signals could result in misleading altimeter information to the pilots or loss of altimeter information.

Type of Certification Basis

Under the provisions of 14 CFR 21.101, Honeywell International, Inc. must show that the Cessna Model 500 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE 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 ''the original type certification basis.'' The certification basis for the modified Cessna Model 500 airplanes includes Part 25 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 25–1 through 25–17. Other applicable amendments, Federal aviation regulations, and special conditions are

also noted in Type Certificate Data Sheet (TCDS) A22CE.

If the Administrator finds that the applicable airworthiness regulations (that is, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 500 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 500 airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of part 36.

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

Special conditions are initially applicable to the model for which they are issues. Should Honeywell International, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Novel or Unusual Design Features

The Cessna Model 500 airplanes will incorporate, under one supplemental type certificate (STC) project, the installation of dual Honeywell AM–250 barometric altimeters. Because these altimeters use electronics to a far greater extent than the original pneumatic or servo altimeters, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, these instruments are considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna Model 500 airplanes modified to include the new altimeters. These special conditions will require that the new Honeywell AM–250 barometric altimeters, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
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.

Applicability

As discussed above, these special conditions are applicable to Cessna Model 500 airplanes modified by Honeywell International, Inc. to include dual Honeywell AM–250 barometric altimeters. should Honeywell International, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate A22CE to incorporate; the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of 14 CFR 21.101.

Conclusion

This action affects only certain design features on Cessna Model 500 airplanes modified by Honeywell International, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

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 supplemental type certification basis for Cessna model 500 airplanes modified by Honeywell International, Inc.

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

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

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

Issued in Renton, Washington, on October 14, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 03–26559 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–52–AD; Amendment 39–13345; AD 2003–21–10]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires an inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. This amendment also requires modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips. This action is necessary to prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Effective November 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 26, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 24, 2003 (68 FR 43683). That action proposed to require an inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. That action also proposed to require modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips.

Comments

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

Conclusion

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

Cost Impact

There are approximately 154 Model MD–11 and—11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 and 6 work hours per airplane depending on the airplane configuration to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost between $133 and $474 depending on the airplane configuration. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $198 and $864 per airplane depending on the airplane configuration.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–21–10 McDonnell Douglas: Amendment 39–13345. Docket 2001–NM–52–AD.

Applicability: Model MD–11 and—11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment, accomplish the following:

Inspection, Modification, Replacement, and Corrective Actions, if Necessary

(a) For airplanes on which Boeing Alert Service Bulletin MD11–24A174, original issue, January 31, 2001; Revision 01, dated April 24, 2001; or Revision 02, dated December 17, 2001; have not been done: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A174, excluding the Evaluation Form; both Revision 03, dated July 25, 2002. Although the service bulletin recommends the completion and submission of an Evaluation Form and a reporting requirement (Appendix), such reporting is not required by this AD.

(1) Do a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment. If any damage is detected, before further flight, repair or replace the damaged part with a new part, per the service bulletin; except if the type of structural material that has been affected is not covered in the Structural Repair Manual (SRM), repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

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

Note 2: Where there are differences between the referenced service bulletin and the AD, the AD prevails.

(2) Modify the applicable terminal strip installation in the cargo compartment (including inspection for damaged cables and repair of any damaged cable).

(3) Replace the applicable terminal strips in the cargo compartment with new strips (including inspection for damaged cables and repair of any damaged cable).

(b) For Group 2 airplanes listed in Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002, on which prior revisions of that service bulletin have been done: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002, excluding the Evaluation Form; both Revision 03, dated July 25, 2002. Although the service bulletin recommends the completion and submission of an Evaluation Form and a reporting requirement (Appendix), such reporting is not required by this AD.

(1) Do a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment. If any damage is detected, before further flight, repair or replace the damaged part with a new part, per the service bulletin; except if the type of structural material that has been affected is not covered in the SRM, repair per a method approved by the Manager, Los Angeles ACO.

(2) Replace the applicable terminal strip in the cargo compartment with a new strip (including inspection for damaged cables and repair of any damaged cable).

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002, excluding Appendix. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on November 26, 2003.

Issued in Renton, Washington, on October 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26367 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–10–AD; Amendment 39–13344; AD 2003–21–09]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. The existing AD currently requires certain checks of the magnetic chip detector plug (chip detector) and the main gearbox (MGB) oil-sight glass; and certain inspections of the lubrication pump (pump) and replacing the MGB and the pump with an airworthy MGB and pump, if necessary. Also, the AD requires that a before a MGB or pump with any time-in-service (TIS) can be installed, it must meet the AD requirements. This amendment requires the same actions as the existing AD but corrects the wording to state that the

check of the chip detector is for sludge rather than metal particles. This amendment is prompted by the need to correct the wording because the term ''metal particles'' may be misleading. The actions specified by this AD are intended to detect sludge on the chip detector, to prevent failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter.

DATES: Effective November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 2002–21–51, Amendment 39–12982 (67 FR 77401, December 18, 2002) for the specified Eurocopter model helicopters was published in the **Federal Register** on July 16, 2003 (68 FR 41977). The action proposed to require checking the chip detector and the MGB oil-sight glass for dark oil; taking an oil sample if dark oil is observed; further inspection of the pump, if necessary; and replacing the MGB and the pump with an airworthy MGB and pump, if necessary. Also, the action proposed to require that before a MGB or pump with any TIS could be installed, it must meet the requirements of the AD. The action also proposed to replace the words ''metal particles'' with the word ''sludge'' and to define ''sludge.'' The term ''sludge'' is used to describe a deposit on the chip detector. This deposit may have both metallic and nonmetallic properties. It is typically dark in color and in the form of a film or paste, as compared to metal chips or particles normally found on the chip detector.

An owner/operator (pilot) holding at least a private pilot certificate may perform the visual checks for sludge on the chip detector and for dark oil in the MGB oil-sight glass and must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). A pilot may perform these checks because they only involve visual checks for sludge on the chip detector, which can be removed without the use of tools, and for dark oil in the MGB oil-sight glass and can be performed equally well by a pilot or a mechanic.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in 14 CFR part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect approximately 105 helicopters of U.S. registry. The FAA also estimates that it will take approximately 10 minutes to check the chip detector and the MGB oil sight glass, 4 work hours to remove the MGB and pump, 1 work hour to inspect the pump, and 4 work hours to install a serviceable MGB and pump. The average labor rate is $60 per work hour. Required parts will cost approximately $4000 for an overhauled pump and up to $60,000 for an overhauled MGB per helicopter. The manufacturer has represented to the FAA that the standard warranty applies if failure occurs within the first 2 years and operating time is less than 1000 hours. Based on these figures, the FAA estimates a total cost impact of the AD on U.S. operators to be $337,540 per year, assuming replacement of one MGB and pump on one helicopter per year and a daily check on all helicopters for 260 days per year.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12982 (67 FR 77401, December 18, 2002) and by adding a new airworthiness directive (AD), Amendment 39–13344, to read as follows:

2003–21–09 Eurocopter France: Amendment 39–13344. Docket No. 2003–SW–10–AD. Supersedes AD 2002–21–51, Amendment 39–12982, Docket No. 2002–SW–48–AD.

Applicability: Model AS355E, F, F1, F2, and N helicopters, with a main gearbox (MGB) lubrication pump (pump), part number 355A32–0700–00, –01, –01M, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day and at intervals not to exceed 10 hours time-in-service (TIS), check the MGB magnetic chip detector plug (chip detector) for any sludge. Also, check for dark oil in the MGB oil-sight glass. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). ''Sludge'' is a deposit on the chip detector that is typically dark in color and in the form of a film or paste, as compared to metal chips or particles normally found on a chip detector. Sludge may have both metallic or nonmetallic properties, may consist of copper (pinion bearing), magnesium (pump case), and steel (pinion) from the oil pump, and a nonmetallic substance from the chemical breakdown of the oil as it interacts with the metal.

Note 1: Eurocopter France Alert Telex No. 05.00.40 R1, dated November 27, 2002, pertains to the subject of this AD.

(b) Before further flight, if any sludge is found on the chip detector, inspect the pump.

(c) Before further flight, if the oil appears dark in color when it is observed through the MGB oil-sight glass, take an oil sample. If the oil taken in the sample is dark or dark purple, before further flight, inspect the pump.

(d) While inspecting the pump, if you find any of the following, replace the MGB and the pump with an airworthy MGB and pump before further flight:

(1) Crank pin play,

(2) Out of round bronze bushing (A of Figure 1),

(3) Offset of the driven gear pinion,

(4) Metal chips, or

(5) Wear (C of Figure 1).

See the following Figure 1:

BILLING CODE 4910–13–P

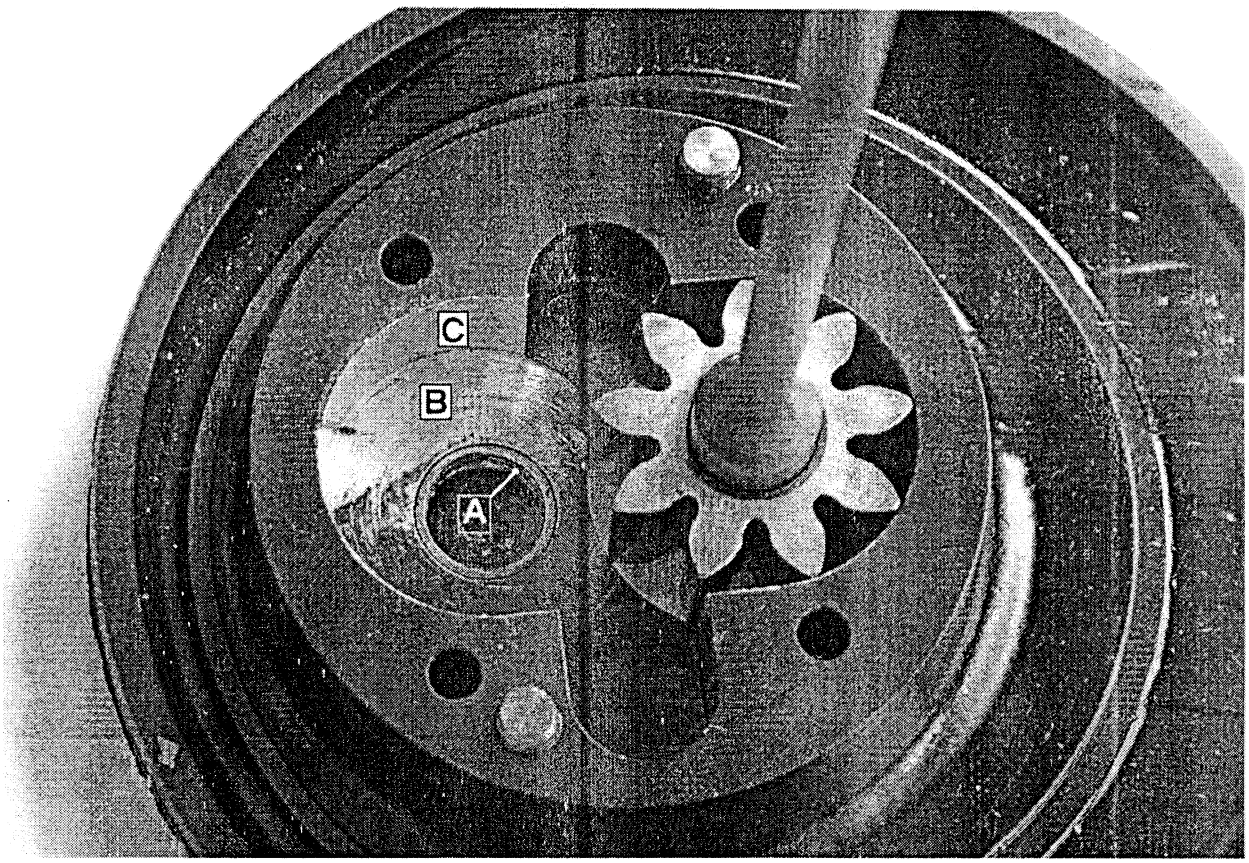

Figure 1

Note 2: If wear is present in the B area only as depicted in Figure 1, replacing the MGB and the pump is not required.

(e) Before installing a different MGB or a pump with any TIS, accomplish the requirements of paragraph (a) of this AD.

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

(g) This amendment becomes effective on November 26, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–331–071(A) R1, dated January 22, 2003.

Issued in Fort Worth, Texas, on October 10, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–26467 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30392; Amdt. No. 3079]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are

needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 22, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 22, 2003.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on October 10, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective October 30, 2003*

Gulf Shores, AL, Jack Edwards, ILS OR LOC Rwy 27, Orig
Gulf Shores, AL, Jack Edwards, RNAV (GPS) Rwy 27, Orig
Gulf Shores, AL, Jack Edwards, RNAV (GPS) Rwy 9, Amdt 1
Gulf Shores, AL, Jack Edwards, VOR–A, Amdt 3
Gulf Shores, AL, Jack Edwards, GPS Rwy 27, Amdt 1A, Cancelled
Orlando, FL, Executive, VOR/DME Rwy 7, Amdt 1
Orlando, FL, Executive, VOR/DME Rwy 25, Amdt 2
Donalsonville, GA, Donalsonville Muni, VOR/DME–A, Amdt 3
Donalsonville, GA, Donalsonville Muni, GPS Rwy 36, Orig, Cancelled

Donalsonville, GA, Donalsonville Muni, GPS Rwy 18, Orig, Cancelled
Donalsonville, GA, Donalsonville Muni, RNAV (GPS) Rwy 36, Orig
Donalsonville, GA, Donalsonville Muni, RNAV (GPS) Rwy 18, Orig
De Kalb, IL, De Kalb Taylor Muni, NDB Rwy 27, Orig
De Kalb, IL, De Kalb Taylor Muni, VOR/DME Rwy 27, Orig
De Kalb, IL, De Kalb Taylor Muni, RNAV (GPS) Rwy 9, Orig
De Kalb, IL, De Kalb Taylor Muni, RNAV (GPS) Rwy 27, Orig
De Kalb, IL, De Kalb Taylor Muni, NDB Rwy 27, Amdt 1, Cancelled
De Kalb, IL, De Kalb Taylor Muni, GPS Rwy 9, Amdt 1, Cancelled
De Kalb, IL, De Kalb Taylor Muni, VOR/DME OR GPS Rwy 27, Amdt 5, Cancelled
Greencastle, IN, Putnam County, NDB Rwy 18, Amdt 1
Greencastle, IN, Putnam County, VOR/DME–A, Amdt 6
Greencastle, IN, Putnam County, RNAV (GPS) Rwy 18, Orig
Greencastle, IN, Putnam County, RNAV (GPS) Rwy 36, Orig
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) Rwy 4L, Orig
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, NDB Rwy 13, Amdt 25
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR Rwy 4L, Amdt 17
Corinth, MS, Roscoe Turner, ILS OR LOC/NDB Rwy 17, Amdt 1
Corinth, MS, Roscoe Turner, RNAV (GPS) Rwy 17, Orig
Corinth, MS, Roscoe Turner, GPS Rwy 17, Orig, Cancelled
Philadelphia, MS, Philadelphia Muni, NDB Rwy 18, Amdt 1
Philadelphia, MS, Philadelphia Muni, NDB Rwy 36, Amdt 1
Philadelphia, MS, Philadelphia Muni, RNAV (GPS) Rwy 36, Orig
Philadelphia, MS, Philadelphia Muni, RNAV (GPS) Rwy 18, Orig
Raymond, MS, John Bell Williams, NDB Rwy 12, Amdt 1
Raymond, MS, John Bell Williams, RNAV (GPS) Rwy 30, Orig
Raymond, MS, John Bell Williams, RNAV (GPS) Rwy 12, Orig
Burlington, NC, Burlington-Alamance Regional, LOC Rwy 6, Amdt 2, Cancelled
Burlington, NC, Burlington-Alamance Regional, ILS OR LOC/NDB Rwy 6, Orig
Salem, OR, McNary Fld, RNAV (GPS) Rwy 31, Orig
Salem, OR, McNary Fld, NDB Rwy 31, Amdt 18E
Chambersburg, PA, Chambersburg Muni, VOR/DME–B, Amdt 2
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS OR LOC Rwy 18R, Amdt 6, ILS Rwy 18R (CAT II, III), Amdt 6
Dallas-Fort Worth, TX, Dallas/Fort Worth International, LOC/DME Rwy 18R, Orig, Cancelled
Dallas-Fort Worth, TX, Dallas/Fort Worth International, Converging ILS Rwy 18R, Amdt 4
Dallas-Fort Worth, TX, Dallas/Fort Worth Intl, Converging ILS Rwy 36L, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, Converging ILS Rwy 36L, Amdt 1A, Cancelled
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS OR LOC Rwy 36L, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS Rwy 36L, Amdt 1, Cancelled

** * * Effective November 27, 2003*

Beaufort, SC, Beaufort County, Radar–1, Amdt 3

** * * Effective December 25, 2003*

Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) Rwy 14, Orig-B
Gustavus, AK, Gustavus, NDB–A, Amdt 1
Gustavus, AK, Gustavus, VOR/DME Rwy 29, Amdt 1
Gustavus, AK, Gustavus, RNAV (GPS) Y Rwy 29, Orig
Nelson Lagoon, AK, Nelson Lagoon, RNAV (GPS) Rwy 8, Orig
Nelson Lagoon, AK, Nelson Lagoon, RNAV (GPS) Rwy 26, Orig
Pilot Point, AK, Pilot Point, RNAV (GPS) Rwy 7, Orig
Pilot Point, AK, Pilot Point, RNAV (GPS) Rwy 25, Orig
Hemet, CA, Hemet-Ryan, NDB–A, Amdt 1
Hemet, CA, Hemet-Ryan, RNAV (GPS) Rwy 5, Orig
Hemet, CA, Hemet-Ryan, GPS Rwy 5, Orig, Cancelled
Los Angeles, CA, Los Angeles Intl, NDB Rwy 24R, Amdt 13, Cancelled
Los Angeles, CA, Los Angeles Intl, VOR OR TACAN OR GPS Rwy 7L/R, Amdt 18A, Cancelled
Los Angeles, CA, Los Angeles Intl, VOR OR TACAN OR GPS Rwy 25L/R, Amdt 15A, Cancelled
Grand Junction, CO, Walker Field, RNAV (GPS) Rwy 29, Amdt 1
New Bedford, MA, New Bedford Regional, LOC BC Rwy 23, Amdt 12
New Bedford, MA, New Bedford Regional, RNAV (GPS) Rwy 5, Orig
New Bedford, MA, New Bedford Regional, RNAV (GPS) Rwy 23, Orig
New Bedford, MA, New Bedford Regional, GPS Rwy 23, Amdt 1, Cancelled
St. Joseph, MO, Rosecrans Memorial, LOC BC Rwy 17, Amdt 9
St. Joseph, MO, Rosecrans Memorial, RNAV (GPS) Rwy 17, Orig
St. Joseph, MO, Rosecrans Memorial, RNAV (GPS) Rwy 35, Orig
St. Joseph, MO, Rosecrans Memorial, VOR/DME RNAV OR GPS Rwy 17, Amdt 4D, Cancelled
St. Joseph, MO, Rosecrans Memorial, VOR OR TACAN Rwy 17, Amdt 14
St. Joseph, MO, Rosecrans Memorial, VOR/DME OR TACAN Rwy 35, Orig
St. Joseph, MO, Rosecrans Memorial, NDB Rwy 35, Amdt 28F
Rocky Mount, NC, Rocky Mount-Wilson Rgnl, VOR/DME Rwy 22, Amdt 2
Rocky Mount, NC, Rocky Mount-Wilson Regional, NDB Rwy 4, Amdt 9
Rocky Mount, NC, Rocky Mount-Wilson Regional, ILS OR LOC Rwy 4, Amdt 16
Rocky Mount, NC, Rocky Mount-Wilson Regional, RNAV (GPS) Rwy 4, Orig
Rocky Mount, NC, Rocky Mount-Wilson Regional, RNAV (GPS) Rwy 22, Orig
Wilmington, OH, Clinton Field, VOR–A, Amdt 1
York, PA, York, RNAV (GPS) Rwy 17, Orig
York, PA, York, GPS Rwy 17, Amdt 1 Cancelled

[FR Doc. 03–26306 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, and 772

[Docket No. 031010256–3256–01]

RIN 0694–AC90

Addition of Kazakhstan to the Nuclear Suppliers Group (NSG), and Other Revisions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: As a result of the admission of Kazakhstan to the Nuclear Suppliers Group (NSG), this rule amends the Export Administration Regulations (EAR) to add Kazakhstan to Country Group A, Column A:4, which identifies the member countries of the NSG, and to the definition of ''Nuclear Suppliers Group.'' The NSG member countries have agreed to establish export licensing procedures for the transfer of items identified on the Annex to the ''Nuclear-Related Dual-Use Equipment, Materials, and Related Technology List,'' which is published by the International Atomic Energy Agency.

This action will lessen the administrative burden on U.S. exporters by decreasing licensing requirements for exports of items controlled for nuclear nonproliferation (NP) reasons to Kazakhstan.

DATES: This rule is effective October 22, 2003.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call Sharron Cook, Regulatory Policy Division, at (202) 482–2440.

For questions of a technical nature, contact Steve Claggett, Nuclear Technology Division, at (202) 482–3550.

SUPPLEMENTARY INFORMATION:

Background

As a result of the admission of Kazakhstan to the Nuclear Suppliers Group (NSG), this rule amends the Export Administration Regulations (EAR) by revising Supplement No. 1 to Part 740, to add Kazakhstan to Country Group A, Column A:4 (Nuclear Suppliers Group) and by revising Supplement No. 1 to Part 738 by

removing the license requirement for Kazakhstan under NP Column 1 in conformance with the licensing policy that applies to other NSG member countries. Please note that exports of items controlled for nuclear nonproliferation (NP) reasons to Kazakhstan may require a license for other reasons set forth in the Commerce Control List or elsewhere in the EAR. This rule also revises the definition for ''Nuclear Suppliers Group (NSG)'', in part 772, to include Kazakhstan.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and record keeping activities account for 12 minutes per submission.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 738 and 772

Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 738, 740, and 772 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 2. Supplement No. 1 to part 738 is amended by removing the ''X'' under ''NP 1'' in the ''Nuclear Nonproliferation'' column for ''Kazakhstan''.

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 4. Supplement Number 1 to part 740, Country Groups, is amended in the table for Country Group A, by adding an entry for ''Kazakhstan'' in alphabetic order, to read as follows:

SUPPLEMENT NO. 1 TO PART 740—COUNTRY GROUPS

COUNTRY GROUP A

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Kazakhstan				X
* * * * * * *				

* * * * *

PART 772—[AMENDED]

■ 5. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 6. Section 772.1 is amended by revising the definition of ''Nuclear Suppliers Group (NSG)'' to read as follows:

§ 772.1 Definitions of Terms as used in the Export Administration Regulations (EAR).

* * * * *

Nuclear Suppliers Group (NSG). The United States and other nations in this multilateral control regime have agreed to guidelines for restricting the export or reexport of items with nuclear applications. Members include: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kazakhstan, Latvia, Luxembourg, the Netherlands, New Zealand, Norway,

Poland, Portugal, Republic of Korea, Romania, Russia, Slovak Republic, Slovenia, Spain, South Africa, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States. See also § 742.3 of the EAR.

* * * * *

Dated: October 15, 2003.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. 03–26563 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–33–P

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AA99

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) updates its regulations to reflect a change in how it evaluates pain and other subjective symptoms when determining if an individual is disabled from all regular employment to reflect recent changes in law.

DATES: This rule is effective on October 22, 2003.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Courts have consistently held that disability for all regular employment under section 2(a)(1)(v) of the Railroad Retirement Act (45 U.S.C. 231a(a)(1)(v)) is synonymous with the inability to perform any substantial gainful activity under section 223(d) of the Social Security Act (42 U.S.C. 423(d)). Therefore, the Board has generally patterned its regulations dealing with the adjudication of claims for disability based upon the inability to engage in all regular employment (20 CFR Part 220) on regulations promulgated by the Social Security Administration (20 CFR Part 404, Subpart P). On November 14, 1991, the Social Security Administration published its final rule (56 FR 57928) expanding its regulations pertaining to how it evaluates symptoms, including pain, in its disability adjudication. The Board has generally followed these regulations in adjudication of claims for disability based on inability to engage in regular employment and now amends its regulations to conform thereto.

Section 220.100(f) explains how a symptom, such as pain, is considered when it appears as a criterion in the Listing of Impairments found in Appendix 1 of this part. Appendix 1 contains medical criteria for finding a person disabled on medical factors alone without consideration of the person's age, education, and work experience.

Section 220.112(a) is amended by eliminating the reference to remarried widow(ers) and surviving divorced spouses. Section 5103 of Public Law 101–508 revised the standard of disability for these groups of beneficiaries to require the consideration of other than medical factors, such as age, education, and experience, in determining disability for all substantial activity for these groups. Prior to the amendment, only medical factors were required to be used in a disability determination for these beneficiaries.

Section 220.114 is revised to parallel the Social Security regulation dealing with the same subject. See § 404.1529 of this chapter. Section 220.114 provides guidance on the evaluation of symptoms, including pain. The regulation conforms to the Board's current procedures and applicable court decisions on the evaluation of symptoms, especially pain, in making disability determinations.

Section 220.114(a) is a general statement of how symptoms, such as pain, are considered in determining disability. It explains that the Board will consider a claimant's symptoms along with other objective medical evidence and other evidence relating to a claimant's condition.

Section 220.114(b) explains that the Board will not find that pain will affect an individual's ability to do basic work activities unless the claimant first establishes that he or she has a medically determinable physical or mental impairment, supported by medical signs and laboratory findings, to which the allegation of pain can reasonably be related.

Section 220.114(c) provides that when a symptom, such as pain, is established, the Board must then evaluate the intensity and persistence of the symptom with respect to how it limits the claimant's capacity for work. In making this evaluation the Board considers all available evidence, including the claimant's medical history, statements from the claimant and his treating physician, and statements from others who have knowledge of the claimant's situation.

Section 220.114(d) explains how symptoms, such as pain, are evaluated in the sequential evaluation process required in disability adjudication.

Section 220.120 is revised to explain that in determining the claimant's residual functional capacity the Board considers the claimant's symptoms, such as pain, and that such pain or other symptoms may limit the claimant's residual functional capacity beyond what can be determined from anatomical or physiological abnormalities taken alone. Consistent with the revision of § 220.120, a new § 220.135 explains that a claimant's symptoms, such as pain, may cause both exertional and nonexertional limitations. This new section defines those terms. Only when the claimant's impairments and related symptoms impose solely exertional restrictions do the rules set forth in Appendix 2 of this part direct a conclusion.

Appendix 2 contains the medical-vocational guidelines or ''grids''. The grids direct a finding of disabled or not disabled based on specified limitations combined with the individual's age, education and work experience. The amendment to § 200.00 of Appendix 2 of this part conforms the section to the revised § 220.120.

Collection of Information Requirements

The amendments to this part do not impose information collection and recordkeeping requirements. Consequently, the final rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of this final rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The amendments made by this rule are not significant. The amendments to sections of part 220 update the Board's regulations to reflect a change in the manner in which pain and other subjective symptoms are evaluated when determining if an individual is disabled from all regular employment. The amendments also clarify the use of Appendices 1 and 2, and make other amendments to reflect recent changes in law.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the definition of ''agency'' contained in 5 U.S.C. 551(l). Section 551(1)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local government, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

The proposed rule was published in the **Federal Register** on September 11, 1995 (60 FR 47122). Comments were solicited and one was received. That commenter suggested that the Board could strengthen its disability program by establishing a mechanism for reevaluating an individual's entitlement to disability annuities being paid by the Board. The Board has an active program of reevaluating disability annuitants by its continuing disability review program. The guidelines for that program are set forth in § 220.186 of this part.

The Board has modified the proposed rule by removing the suggested addition of a paragraph (g) to § 220.110 and a paragraph (d) to § 220.134. That proposed text has been removed as it was inconsistent with regulations governing the cross-referencing by one agency to the regulations of another agency. See 1 CFR 21.21(c).

List of Subjects in 20 CFR Part 220

Railroad retirement.

■ For the reasons set out in the preamble, the Railroad Retirement Board amends part 220 of title 20 of the Code of Federal Regulations as follows:

PART 220—DETERMINING DISABILITY

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

■ 2. Section 220.110 is amended by adding a new paragraph (f) to read as follows:

§ 220.110 Listing of Impairments in Appendix 1 of this part.

* * * * *

(f) *Symptoms as criteria of listed impairment(s).* Some listed impairment(s) include symptoms usually associated with those impairment(s) as criteria. Generally, when a symptom is one of the criteria in a listed impairment, it is only necessary that the symptom be present in combination with the other criteria. It is not necessary, unless the listing specifically states otherwise, to provide information about the intensity, persistence or limiting effects of the symptom as long as all other findings required by the specific listing are present.

■ 3. The penultimate sentence of § 220.112(a) is revised to read as follows:

§ 220.112 Conclusions by physicians concerning the claimant's disability.

(a) * * * The decision as to whether a claimant is disabled may involve more than medical considerations and the Board may have to consider such factors as age, education and past work experience. * * *

■ 4. Section 220.114 is revised to read as follows:

§ 220.114 Evaluation of symptoms, including pain.

(a) *General.* In determining whether the claimant is disabled, the Board considers all of the claimant's symptoms, including pain, and the extent to which the claimant's symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. By objective medical evidence, the Board means medical signs and laboratory findings as defined in §§ 220.113(b) and (c) of this part. By other evidence, the Board means the kinds of evidence described in §§ 220.45 and 220.46 of this part. These include statements or reports from the claimant, the claimant's treating or examining physician or psychologist, and others about the claimant's medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how the claimant's impairment(s) and any related symptoms affect the claimant's ability to work. The Board will consider all of the claimant's statements about his or her symptoms, such as pain, and any description by the claimant, the claimant's physician, or psychologist, or other persons about how the symptoms affect the claimant's activities of daily living and ability to work. However, statements alone about the claimant's pain or other symptoms will not establish that the claimant is disabled; there must be medical signs and laboratory findings which show that the claimant has a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of the claimant's pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that the claimant is disabled. In evaluating the intensity and persistence of the claimant's symptoms, including pain, the Board will consider all of the available evidence, including the claimant's medical history, the medical signs and laboratory findings and statements about how the claimant's symptoms affect the claimant. (Section 220.112(b) of this part explains how the Board considers opinions of the claimant's treating source and other medical opinions on the existence and severity of the claimant's symptoms, such as pain.) The Board will then determine the extent to which the claimant's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how the claimant's symptoms affect the claimant's ability to work.

(b) *Need for medically determinable impairment that could reasonably be expected to produce symptoms, such as pain.* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the claimant's ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological

abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. The finding that the claimant's impairment(s) could reasonably be expected to produce the claimant's pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of the claimant's symptoms. The Board will develop evidence regarding the possibility of a medically determinable mental impairment when the Board has information to suggest that such an impairment exists, and the claimant alleges pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

(c) *Evaluating the intensity and persistence of symptoms, such as pain, and determining the extent to which the claimant's symptoms limit his or her capacity for work.*—(1) *General.* When the medical signs or laboratory findings show that the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain, the Board must then evaluate the intensity and persistence of the claimant's symptoms so that it can determine how the claimant's symptoms limit the claimant's capacity for work. In evaluating the intensity and persistence of the claimant's symptoms, the Board considers all of the available evidence, including the claimant's medical history, the medical signs and laboratory findings, and statements from the claimant, the claimant's treating or examining physician or psychologist, or other persons about how the claimant's symptoms affect the claimant. The Board also considers the medical opinions of the claimant's treating source and other medical opinions as explained in § 220.112 of this part. Paragraphs (c)(2) through (c)(4) of this section explain further how the Board evaluates the intensity and persistence of the claimant's symptoms and how it determines the extent to which the claimant's symptoms limit the claimant's capacity for work, when the medical signs or laboratory findings show that the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain.

(2) *Consideration of objective medical evidence.* Objective medical evidence is evidence obtained from the application of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption. Objective medical evidence of this type is a useful indicator to assist the Board in making reasonable conclusions about the intensity and persistence of the claimant's symptoms and the effect those symptoms, such as pain, may have on the claimant's ability to work. The Board must always attempt to obtain objective medical evidence and, when it is obtained, the Board will consider it in reaching a conclusion as to whether the claimant is disabled. However, the Board will not reject the claimant's statements about the intensity and persistence of the claimant's pain or other symptoms or about the effect the claimant's symptoms have on the claimant's ability to work solely because the available objective medical evidence does not substantiate the claimant's statements.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, the Board will carefully consider any other information the claimant may submit about his or her symptoms. The information that the claimant, the claimant's treating or examining physician or psychologist, or other persons provide about the claimant's pain or other symptoms (*e.g.*, what may precipitate or aggravate the claimant's symptoms, what medications, treatments or other methods he or she uses to alleviate them, and how the symptoms may affect the claimant's pattern of daily living) is also an important indicator of the intensity and persistence of the claimant's symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which the claimant, his or her treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether the claimant is disabled. The Board will consider all of the evidence presented, including information about the claimant's prior work record, the claimant's statements about his or her symptoms, evidence submitted by the claimant's treating, examining or consulting physician or psychologist, and observations by Board employees and other persons. Section 220.112 of this part explains in detail how the Board considers and weighs treating source and other medical opinions about the nature and severity of the claimant's impairment(s) and any related symptoms, such as pain. Factors relevant to the claimant's symptoms, such as pain, which the Board will consider include:

(i) The claimant's daily activities;

(ii) The location, duration, frequency, and intensity of the claimant's pain or other symptoms;

(iii) Precipitating and aggravating factors;

(iv) The type, dosage, effectiveness, and side effects of any medication the claimant takes or has taken to alleviate the claimant's pain or other symptoms;

(v) Treatment, other than medication, the claimant receives or has received for relief of pain or other symptoms;

(vi) Any measures the claimant uses or has used to relieve pain or other symptoms (*e.g.*, lying flat on the claimant's back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and

(vii) Other factors concerning the claimant's functional limitations and restrictions due to pain or other symptoms.

(4) *How the Board determines the extent to which symptoms, such as pain, affect the claimant's capacity to perform basic work activities.* In determining the extent to which the claimant's symptoms, such as pain, affect the claimant's capacity to perform basic work activities, the Board considers all of the available evidence described in paragraphs (c)(1) through (c)(3) of this section. The Board will consider the claimant's statements about the intensity, persistence, and limiting effects of the claimant's symptoms, and the Board will evaluate the claimant's statements in relation to the objective medical evidence and other evidence, in reaching a conclusion as to whether the claimant is disabled. The Board will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between the claimant's statements and the rest of the evidence, including the claimant's medical history, the medical signs and laboratory findings, and statements by the claimant's treating or examining physician or psychologist or other persons about how the claimant's symptoms affect the claimant. The claimant's symptoms, including pain, will be determined to diminish the claimant's capacity for basic work activities to the extent that the claimant's alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence.

(d) *Consideration of symptoms in the disability determination process.* The Board follows a set order of steps to determine whether the claimant is

disabled. If the claimant is not doing substantial gainful activity, the Board considers the claimant's symptoms, such as pain, to evaluate whether the claimant has a severe physical or mental impairment(s), and at each of the remaining steps in the process. Section 220.100 explains this process in detail. The Board also considers the claimant's symptoms, such as pain, at the appropriate steps in the Board's review when the Board considers whether the claimant's disability continues. Subpart O of this part explains the procedure the Board follows in reviewing whether the claimant's disability continues.

(1) *Need to establish a severe medically determinable impairment(s).* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, are considered in making a determination as to whether the claimant's impairment or combination of impairment(s) is severe. (*See* § 220.100(b)(2) of this part).

(2) *Decision whether the Listing of Impairments is met.* Some listed impairment(s) include symptoms, such as pain, as criteria. Section 220.100(f) of this part explains how the Board considers the claimant's symptoms when the claimant's symptoms are included as criteria for a listed impairment.

(3) *Decision whether the Listing of Impairments is equaled.* If the claimant's impairment is not the same as a listed impairment, the Board must determine whether the claimant's impairment(s) is medically equivalent to a listed impairment. Section 220.111 of this part explains how the Board makes this determination. Under § 220.111(b) of this part, the Board will consider equivalence based on medical evidence only. In considering whether the claimant's symptoms, signs, and laboratory findings are medically equal to the symptoms, signs, and laboratory findings of a listed impairment, the Board will look to see whether the claimant's symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria. However, the Board will not substitute the claimant's allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the claimant's impairment(s) to that of a listed impairment. If the symptoms, signs, and laboratory findings of the claimant's impairment(s) are equivalent in severity to those of a listed impairment, the Board will find the claimant disabled. If it does not, the Board will consider the impact of the claimant's symptoms on the claimant's residual functional capacity. (*See* paragraph (d)(4) of this section.)

(4) *Impact of symptoms (including pain) on residual functional capacity.* If the claimant has a medically determinable severe physical or mental impairment(s), but the claimant's impairment(s) does not meet or equal an impairment listed in Appendix 1 of this part, the Board will consider the impact of the claimant's impairment(s) and any related symptoms, including pain, on the claimant's residual functional capacity. (*See* § 220.120 of this part.)

■ 5. Section 220.120 is revised to read as follows:

§ 220.120 The claimant's residual functional capacity.

(a) *General.* The claimant's impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what the claimant can do in a work setting. The claimant's residual functional capacity is what the claimant can still do despite the claimant's limitations. If the claimant has more than one impairment, the Board will consider all of the claimant's impairment(s) of which the Board is aware. The Board will consider the claimant's ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even the claimant's own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of the claimant's medical condition. Observations by the claimant's treating or examining physicians or psychologists, the claimant's family, neighbors, friends, or other persons, of the claimant's limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the claimant's medical records to enable us to decide to what extent the claimant's impairment(s) keeps the claimant from performing particular work activities. This assessment of the claimant's remaining capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite the claimant's impairment(s). Then, using the guidelines in §§ 220.125 and 220.134 of this part the claimant's vocational background is considered along with the claimant's residual functional capacity in arriving at a disability determination or decision. In deciding whether the claimant's disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant has experienced is related to the claimant's ability to work as discussed in § 220.178 of this part.

(b) *Physical abilities.* When the Board assesses the claimant's physical abilities, the Board first assesses the nature and extent of the claimant's physical limitations and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce the claimant's ability to do past work and other work.

(c) *Mental abilities.* When the Board assesses the claimant's mental abilities, the Board first assesses the nature and extent of the claimant's mental limitations and restrictions and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work setting, may reduce the claimant's ability to do past work and other work.

(d) *Other abilities affected by impairment(s).* Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If the claimant has this type of impairment(s), the Board considers any resulting limitations and restrictions which may reduce the claimant's ability to do past work and other work in deciding the claimant's residual functional capacity.

(e) *Total limiting effects.* When the claimant has a severe impairment(s), but the claimant's symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in Appendix 1 of this part, the Board will consider the limiting effects of all of the claimant's impairment(s), even those that are not severe, in determining the claimant's residual functional capacity.

Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; *e.g.*, someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of the claimant's impairment(s) and any related symptoms, the Board will consider all of the medical and nonmedical evidence, including the information described in § 220.114 of this part.

■ 6. A new § 220.135 is added to Subpart K to read as follows:

§ 220.135 Exertional and nonexertional limitations.

(a) *General.* The claimant's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit the claimant's ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect the claimant's ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 220.132 and 220.134 of this part explain how the Board uses the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect the claimant's ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. Sections 220.100(b)(5) and 220.180(h) of this part explain that if the claimant can no longer do the claimant's past relevant work because of a severe medically determinable impairment(s), the Board must determine whether the claimant's impairment(s), when considered along with the claimant's age, education, and work experience, prevents the claimant from doing any other work which exists in the national economy in order to decide whether the claimant is disabled or continues to be disabled. Paragraphs (b), (c), and (d) of this section explain how the Board applies the medical-vocational guidelines in Appendix 2 of this part in making this determination, depending on whether the limitations or restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), the Board considers that the claimant has only exertional limitations. When the claimant's impairment(s) and related symptoms only impose exertional limitations and the claimant's specific vocational profile is listed in a rule contained in Appendix 2 of this part, the Board will directly apply that rule to decide whether the claimant is disabled.

(c) *Nonexertional limitations.* (1) When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the demands of jobs other than the strength demands, the Board considers that the claimant has only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

(i) Difficulty functioning because the claimant is nervous, anxious, or depressed;

(ii) Difficulty maintaining attention or concentration;

(iii) Difficulty understanding or remembering detailed instructions;

(iv) Difficulty in seeing or hearing;

(v) Difficulty tolerating some physical feature(s) of certain work settings, *e.g.*, the claimant cannot tolerate dust or fumes; or

(vi) Difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If the claimant's impairment(s) and related symptoms, such as pain, only affect the claimant's ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2 of this part.

(d) *Combined exertional and nonexertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength and demands of jobs other than the strength demands, the Board considers that the claimant has a combination of exertional and nonexertional limitations or restrictions. If the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength and demands of jobs other than the strength demands, the Board will not directly apply the rules in Appendix 2 unless there is a rule that directs a conclusion that the claimant is disabled based upon the claimant's strength limitations; otherwise the rules provide a framework to guide the Board's decision.

Appendix 2 to Part 220—Medical-Vocational Guidelines

■ 7. Revise section 200.00(c) of Appendix 2 to part 220—Medical-Vocational Guidelines to read as follows:

200.00 *Introduction.*

* * * * *

(c) In the application of the rules, the individual's residual functional capacity (*i.e.*, the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, the Board considers his or her symptoms (such as pain), signs, and laboratory findings together with other evidence the Board obtains.

* * * * *

Dated: October 16, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–26623 Filed 10–21–03; 8:45 am]

BILLING CODE 7905–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 402

[Regulations No. 2]

RIN 0960–AF91

Availability of Information and Records to the Public

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules amend our regulations to reflect organizational changes and to correct a typographical error. We are changing the title of the official responsible for decisions on Freedom of Information Act (FOIA) requests to conform to organizational changes. These revisions will inform the public of the change in the official designated as SSA's Freedom of Information Officer.

EFFECTIVE DATE: October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Ethel Burrows, Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, 1500 Dunleavy Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, *regulations@ssa.gov,* (410) 965–3948 or TTY (410) 966–5609 for information about this rule. For information on eligibility or filing for benefits: Call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet website, Social Security Online, at *http://www.socialsecurity.gov.*

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On October 10, 2002, we published a notice of organizational and functional changes within the Office of the General Counsel (OGC) (67 FR 63185). The notice established the Office of Public Disclosure in OGC, which is now responsible for FOIA activities in SSA. The Office of Program Support, Office of Disclosure Policy previously performed this function, in the Office of Disability and Income Security Programs. On November 15, 2002, we published a notice deleting the Office of Program Support as an organization (67 FR 69287).

We last published final rules revising these sections in the **Federal Register** on January 29, 1997 (62 FR 4154). These changes we are publishing today do not affect any programs or the eligibility criteria for any programs.

Regulatory Procedures

Justification for Final Rule and for Waiving the 30-Day Delay in the Effective Date

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for these rules. Good cause exists because we are making no substantive changes in these final rules. We are merely updating the sections of our regulations where the organizational structure changed for the Office of Public Disclosure and making one typographical correction. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as final rules. In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in our regulations.

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These rules impose no additional reporting and recordkeeping requirements that require OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income; and 96.020 Special Benefits for Certain World War II Veterans.)

List of Subjects in 20 CFR Part 402

Administrative practice and procedure, Archives and records, Freedom of information.

Dated: October 10, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending part 402 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

■ 1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905, 26 U.S.C. 6103; 36 U.S.C. 923b; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Section 402.125 is amended by removing the words ''Director, Office of Disclosure Policy'' and adding in their place the words ''Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.''

■ 3. Section 402.135 is amended by removing the words ''The Director, Office of Disclosure Policy'' and adding in their place the words ''The Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.''

■ 4. In section 402.180, paragraph (a), the cross-reference to § 402.120 is revised to § 402.140.

■ 5. In § 402.190, paragraph (a) is amended by removing the words ''Director, Office of Disclosure Policy'' and adding in their place the words ''Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.''

■ 6. Section 402.195, paragraph (a) is amended by removing the words ''Director of the Office of Disclosure Policy'' and adding in their place the words ''Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.''

[FR Doc. 03–26586 Filed 10–21–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Crystalline Free Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The NADA provides for the veterinary prescription use of ceftiofur crystalline free acid suspension in beef and nonlactating dairy cattle, by subcutaneous injection in the ear, for the treatment and control of bovine respiratory disease (BRD).

DATES: This rule is effective October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *jgotthar@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed NADA 141–209 for NAXCEL XT (ceftiofur crystalline free acid) Sterile Suspension. The NADA provides for the veterinary prescription use of ceftiofur crystalline free acid suspension in beef and nonlactating dairy cattle, by subcutaneous injection in the ear, for the treatment of BRD (shipping fever, pneumonia) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Haemophilus somnus* and for the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica*, *P. multocida*, and *H. somnus*. The application is approved as of September 5, 2003, and the regulations are amended in 21 CFR part 522 by adding new § 522.315 to reflect the approval. In addition, 21 CFR 556.113 is being amended to add an acceptable single-dose intake for residues of ceftiofur at the injection site and a tolerance for residues at the injection site. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning September 5, 2003.

The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.315 is added to read as follows:

§ 522.315 Ceftiofur crystalline free acid.

(a) *Specifications*. Each milliliter of suspension contains 200 milligrams (mg) ceftiofur equivalents (CE).

(b) *Sponsor*. See No. 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.113 of this chapter.

(d) *Conditions of use in cattle*—(1) *Amount*. 6.6 mg CE per kilogram of body weight by a single, subcutaneous injection in the middle third of the posterior aspect of the ear.

(2) *Indications for use*. For the treatment of bovine respiratory disease (BRD, shipping fever, pneumonia) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Haemophilus somnus*. For the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica*, *P. multocida*, and *H. somnus*.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 4. Section 556.113 is amended by redesignating paragraph (a) as paragraph (a)(1); by adding a new header to paragraph (a); by adding new paragraph (a)(2); and by adding a new sentence to the end of paragraph (b)(2) to read as follows:

§ 556.113 Ceftiofur.

(a) *Acceptable daily intake and acceptable single-dose intake—(1) Acceptable daily intake (ADI).* * * *

(2) *Acceptable single-dose intake (ASDI).* The ASDI total residues of ceftiofur is 0.830 milligrams per kilogram of body weight. The ASDI is the amount of total residues of ceftiofur that may safely be consumed in a single meal. The ASDI is used to derive the tolerance for residues of desfuroylceftiofur at the injection site.

(b) * * *

(1) * * *

(2) * * * The tolerance for residues of desfuroylceftiofur in injection site muscle is 166 parts per million.

Dated: October 2, 2003.

Andrew J. Beaulieu,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–26569 Filed 10–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9093]

RIN 1545–AX39

Special Rules for Certain Foreign Business Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing rules regarding the application of the general entity classification rules to certain foreign business entities, in particular providing a rule that terminates the grandfathered status of certain foreign business entities upon a 50 percent change of ownership and a special rule that clarifies and further modifies the rules relating to whether the classification of certain foreign eligible entities is relevant for Federal tax purposes.

EFFECTIVE DATES: These regulations are effective as of October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1996, Treasury and IRS published in the **Federal Register** (61 FR 66584) final regulations relating to the classification of business entities under section 7701 (check-the-box regulations). On November 29, 1999, Treasury and the IRS published in the **Federal Register** (64 FR 66591) a notice of proposed rulemaking (REG–110385–99) proposing to amend §§ 301.7701–2 and 301.7701–3 of the current check-the-box regulations (proposed regulations). A public hearing on the proposed regulations was held on January 31, 2000. In addition, written comments were received. Most of the written and oral comments related to proposed § 301.7701–3(h), which provided a rule that would have operated to change the classification of a foreign disregarded entity if a so-called ''extraordinary transaction'' occurred one day before or within one year after the election to treat the entity as disregarded. On June 26, 2003, Treasury and the IRS issued Notice 2003–46 (2003–28 IRB 53) announcing the intention to withdraw this extraordinary transaction rule of proposed § 301.7701–3(h) and to finalize the remaining provisions of the proposed regulations.

With the publication of a notice of withdrawal elsewhere in this issue of the **Federal Register**, proposed § 301.7701–3(h) is withdrawn. This Treasury decision adopts without substantive change the remaining provisions of the proposed regulations. The final regulations thus adopt the following provisions from the proposed regulations: (1) The rule that terminates the grandfathered status of certain foreign business entities when there has been a 50 percent change of ownership of such entity; (2) the provision clarifying that a foreign eligible entity with respect to which an entity classification election is made and which is not otherwise relevant for Federal tax purposes is deemed so relevant only on the effective date specified on a Form 8832, ''Entity Classification Election'; and (3) the modifications to the classification rules for certain foreign eligible entities that have never been relevant or are no longer relevant for Federal tax purposes.

Explanation of Provisions

A. Grandfathered Foreign Per Se Entities

The check-the-box regulations allow certain foreign business entities that were in existence and treated as partnerships prior to the date the check-the-box regulations were proposed (PS–43–95, 61 FR 21989) and that would otherwise be classified as per se corporations under § 301.7701–2(b)(8)(i) to remain classified as partnerships if the conditions enumerated in § 301.7701–2(d)(1) are satisfied. These rules also provide that the occurrence of certain events results in a termination of this grandfathered status. *See* § 301.7701–2(d)(3)(i). The final regulations adopt the rule in the proposed regulations at § 301.7701–2(d)(3)(i) that provides an additional event resulting in the termination of an entity's grandfathered status. Under this rule, an entity's grandfathered status is terminated on the date when one or more persons who were not owners of the entity as of November 29, 1999, own in the aggregate a 50 percent or greater interest in the entity. Consistent with the proposed regulations, the final regulations provide that this rule will apply as of the date the final regulations are published in the **Federal Register**; therefore, if persons that were not owners of a grandfathered entity on November 29, 1999, obtain a greater than 50 percent ownership interest between November 29, 1999, and October 22, 2003, the grandfathered entity will cease to have that status on October 22, 2003.

Several commentators requested clarification as to whether this rule takes into account changes in direct ownership only or also changes in indirect ownership, and they suggested that the rule should take into account only changes in direct ownership. Treasury and the IRS believe that for purposes of grandfathered foreign per se entities a rule that took only direct changes of ownership into account could be easily circumvented in inappropriate cases. Therefore, this rule has not been modified in these final regulations. Some commentators requested that the rule be limited to significant changes in ownership within a specified period of time. For example, one commentator suggested that the rule be limited to situations where persons obtained a 50 percent or greater ownership interest within a 12-month period. The final regulations do not adopt this suggestion because Treasury and the IRS believe that an entity should retain grandfathered status only if there have been no significant changes in the ownership of that entity.

B. Relevance of Classification

The check-the-box regulations provide that if the classification of a foreign eligible entity that was previously relevant for Federal tax purposes ceases to be relevant for 60 consecutive months and then subsequently becomes relevant again, the entity's classification at the start of the subsequent period of relevance will be determined under the default classification rules (60-month rule).

These final regulations adopt the two rules in the proposed regulations that relate to the application of the 60-month rule. First, these final regulations adopt the rule providing that the classification of a foreign eligible entity that files an entity classification election is deemed to be relevant for Federal tax purposes on the effective date of the election for purposes of the 60-month rule. Second, these final regulations adopt the rule providing that the classification of a foreign eligible entity whose classification has never been relevant for Federal tax purposes will initially be determined pursuant to the default classification provisions of § 301.7701–3(b)(2) at the time the classification of the entity first becomes relevant.

Commentators generally agreed with and supported the approach taken in the proposed regulations with respect to the relevance issues, and several commentators requested that these provisions be retroactive when finalized. These final regulations do not adopt the suggestion that these provisions be applied retroactively because Treasury and the IRS believe that it is not in the interest of sound tax administration.

One commentator requested that the provisions be revised to clarify that it is the Federal tax classification of the foreign eligible entity, and not the entity itself, that is deemed to be relevant. Treasury and the IRS have adopted this clarifying change in these final regulations.

One commentator requested that the regulations clarify why the classification of a foreign eligible entity, not otherwise

relevant, that files Form 8832, ''Entity Classification Election'', is deemed relevant only on the date the entity classification election is effective. The commentator neither suggested what the period of deemed relevance should be if not limited to one day nor suggested a principle for when the deemed relevance should terminate such that the 60-month rule would be triggered. In the interest of certainty and administrability of the application of the 60-month rule, Treasury and the IRS have retained the limitation of deemed relevance to the day on which the entity's classification is effective.

One commentator requested further guidance on when and under what circumstances the classification of a foreign eligible entity that was previously relevant ceases to be relevant under the 60-month rule. Treasury and the IRS believe § 301.7701–3(d)(1) and (3) provide sufficient guidance on when an entity's classification becomes relevant and, accordingly, when an entity's classification ceases to be relevant.

One commentator suggested that the regulations be revised to provide that an election by a non-relevant foreign entity to continue its current classification may be filed at any time within the 60-month period starting on the day after the date of the most recent election for that entity, and that such election will start a new 60-month period. Section 301.7701–3(c) provides that an eligible entity may elect to be classified other than as provided under the default classification rules of § 301.7701–3(b), or to change its election. Allowing an eligible entity whose classification is not relevant to renew its election for purposes of the 60-month rule would frustrate the policies underlying that rule. Accordingly, the suggestion was not adopted.

One commentator requested clarification and examples regarding the determination of the classification of a foreign eligible entity whose classification was never relevant or whose classification has not been relevant for 60 months and therefore has lapsed under the 60-month rule. In either case (assuming in the latter case that no election is made following the lapse of the classification), the entity's classification initially will be determined under the default classification rules of § 301.7701–3(b)(2) when the classification of the entity becomes relevant. Under the general rules of § 301.7701–3(c), an eligible entity may elect at such time to be classified other than as provided under the default classification rules, and may elect at some later time to change its classification. Treasury and the IRS do not believe at this time that further guidance or examples are needed to illustrate these general rules.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal authors of these regulations are Aaron A. Farmer and Ronald M. Gootzeit, Office of Associate Chief Counsel (International). However, other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.7701–2 is amended by:

■ 1. Removing the language ''or'' at the end of paragraph (d)(3)(i)(B).

■ 2. Removing the period at the end of paragraph (d)(3)(i)(C) and adding ''; or'' in its place.

■ 3. Adding paragraph (d)(3)(i)(D).

■ 4. Adding a sentence at the end of paragraph (e).

The additions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(D) The date any person or persons, who were not owners of the entity as of November 29, 1999, own in the aggregate a 50 percent or greater interest in the entity.

* * * * *

(e) *Effective date.* * * * However, paragraph (d)(3)(i)(D) of this section applies on or after October 22, 2003.

■ **Par. 3.** Section 301.7701–3 is amended as follows:

■ 1. The text of paragraph (d)(1) following the paragraph heading is redesignated as paragraph (d)(1)(i), and a paragraph heading is added for paragraph (d)(1)(i).

■ 2. Paragraph (d)(1)(ii) is added.

■ 3. Paragraph (d)(2) is revised.

■ 4. Paragraphs (d)(3) and (d)(4) are added.

The revision and additions read as follows:

§ 301.7701–3 Classification of certain business entities.

* * * * *

(d) *Special rules for foreign eligible entities*—(1) *Definition of relevance*—(i) *General rule.* * * *

(ii) *Deemed relevance*—(A) *General rule.* For purposes of this section, except as provided in paragraph (d)(1)(ii)(B) of this section, the classification for Federal tax purposes of a foreign eligible entity that files Form 8832, ''Entity Classification Election'', shall be deemed to be relevant only on the date the entity classification election is effective.

(B) *Exception.* If the classification of a foreign eligible entity is relevant within the meaning of paragraph (d)(1)(i) of this section, then the rule in paragraph (d)(1)(ii)(A) of this section shall not apply.

(2) *Entities the classification of which has never been relevant.* If the classification of a foreign eligible entity has never been relevant (as defined in paragraph (d)(1) of this section), then the entity's classification will initially be determined pursuant to the provisions of paragraph (b)(2) of this section when the classification of the entity first becomes relevant (as defined in paragraph (d)(1)(i) of this section).

(3) *Special rule when classification is no longer relevant.* If the classification of a foreign eligible entity is not relevant (as defined in paragraph (d)(1) of this section) for 60 consecutive months, then the entity's classification will initially be determined pursuant to the provisions of paragraph (b)(2) of this section when the classification of the foreign eligible entity becomes relevant (as defined in paragraph (d)(1)(i) of this section). The date that the classification of a foreign entity is not relevant is the date an event occurs that causes the classification to no longer be relevant, or, if no event occurs in a taxable year

that causes the classification to be relevant, then the date is the first day of that taxable year.

(4) *Effective date.* Paragraphs (d)(1)(ii), (d)(2), and (d)(3) of this section apply on or after October 22, 2003.

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: October 8, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–26547 Filed 10–21–03; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3145, MB Docket No. 03–121, RM–10707]

Television Broadcast Service; Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Estes Broadcasting, Inc., substitutes channel 38 – for channel 54+ at Longview, Texas. *See* 68 FR 33431, June 4, 2003. TV channel 38 – can be allotted to Longview, Texas, in compliance with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules. The coordinates for channel 38 – at Longview are North Latitude 32–35–23 and West Longitude 95–23–27. With this action, this proceeding is terminated.

DATES: Effective December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–121, adopted October 9, 2003, and released October 16, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via-e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Texas, is amended by removing TV channel 54+ and adding TV channel 38 – at Longview.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–26681 Filed 10–21–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 204
Wednesday, October 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–28–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters. This proposal would require modifying each passenger compartment sliding door (door) by applying a kit to replace the levers and links. This proposal is prompted by instances of a door inadvertently opening during flight due to the unstable configuration of the door. The actions specified by this proposed AD are intended to prevent the inadvertent opening of a door during flight and loss of a passenger or other objects from the cabin.

DATES: Comments must be received on or before December 22, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

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 should 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 will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–28–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

The Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. ENAC advises that the doors should be modified.

Agusta has issued Alert Bollettino Tecnico No. 109EP–33, dated March 19, 2003 (ABT), which specifies modifying the opening and closing mechanism of the passenger compartment sliding doors by installing a new lever and a new link to avoid the possibility of the mechanism not reaching the stowed position. Agusta reports the accidental opening during flight of one of the doors, on a few helicopters, without any harm to the passengers. ENAC classified this ABT as mandatory and issued AD No. 2003–109, dated March 27, 2003, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, ENAC has kept the FAA informed of the situation described above. The FAA has examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require modifying the doors by installing a new lever and link and other hardware contained in kits, part number (P/N) 109–0823–25–101 (left hand) and (P/N) 109–0823–25–102 (right hand). The actions would be required to be accomplished in accordance with the ABT described previously.

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 AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this proposed AD would affect 34 helicopters of U.S. registry, and the proposed actions would take approximately 4 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts would cost approximately $3000 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $110,840 ($3260 per helicopter). However, Agusta states in its ABT that it will supply the parts at no cost and will reimburse up to 4 work hours to modify the doors at a fixed rate of $40. Assuming this warranty coverage, the estimated total cost impact of this AD on U.S. operators would be $3400 ($100 per helicopter).

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 a new airworthiness directive to read as follows:

Agusta S.p.A. Docket No. 2003–SW–28–AD.

Applicability: Model A109E helicopters, up to and including serial number (S/N) 11150 with Pratt & Whitney Canada, Inc. PW206C engines, and S/N 11501 through 11509 with Turbomeca Arrius TM2K1 engines, with a passenger compartment sliding door (door), part number (P/N) 109–0360–48–101 (left-hand (LH)), P/N 109–0360–48–102 (right-hand (RH)), P/N 109–0360–48–201 (LH), or P/N 109–0360–48–202 (RH), installed, certificated in any category.

Compliance: Required within 90 days, unless accomplished previously.

To prevent the inadvertent opening of a door and loss of a passenger or other objects from the cabin, accomplish the following:

(a) Modify the doors by replacing levers, P/N 109–0362–30–103 (LH) and P/N 109–0362–30–104 (RH), and links , P/N 109–0362–05–101; with levers P/N 109–0362–30–109 (LH) and P/N 109–0362–30–110 (RH), and links, P/N 109–0362–05–105, and the hardware contained in kits, P/N 109–0823–25–101 (LH) and P/N 109–0823–25–102 (RH) in accordance with the Compliance Instructions in Agusta Bollettino Tecnico No. 109 EP–33, dated March 19, 2003.

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

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2003–109, dated March 27, 2003.

Issued in Fort Worth, Texas, on October 16, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–26624 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 031009254–3254–01]

RIN 0607–AA38

Mandatory Automated Export System (AES) Filing for all Shipments Requiring Shipper's Export Declaration Information

AGENCY: Bureau of the Census, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Census Bureau (Census Bureau) is issuing this advance notice of proposed rulemaking to announce and to solicit comments on the Census Bureau's intent to propose a rule that would make mandatory the filing of all export shipments requiring Shipper's Export Declaration (SED) information on the Automated Export System (AES)/*AESDirect*. The Census Bureau also requests comment on its intention, subject to agreement with the Bureau of Customs and Border Protection (CBP) and other federal agencies participating in the AES, to modify the AES Option 4 post-departure filing program. The Census Bureau welcomes any comments or concerns regarding the impact of these intended changes on the export community.

DATES: Submit written comments regarding this document on or before November 21, 2003.

ADDRESSES: Direct all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, (301) 763–2255, by fax (301) 457–2645, or by e-mail *c.harvey.monk,jr@census.gov*.

SUPPLEMENTARY INFORMATION: The AES is the electronic method to file the information required on the paper SED and the ocean manifest information directly with the CBP. AES*Direct* is the Census Bureau's free Internet-based system for filing SED information on the AES. Further references to the AES cover both the AES and AES*Direct*.

Filing on the AES will become mandatory for all export shipments required to be filed under Title 13, United States Code (U.S.C.), Chapter 9. On September 30, 2002, the President signed H.R. 1646 into law (Public Law 107–228). The short title to this law is the Foreign Relations Authorization Act, Fiscal Year 2003. Division B is the Security Assistance Act of 2002. Section 1404—Improvements to the Automated Export System—amends Title 13, U.S.C., Chapter 9.

The AES mandatory electronic filing requirement and penalty authority are set forth in Public Law 107–228. This law directs the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Treasury, to publish regulations in the **Federal Register** requiring, upon the effective date of these regulations, that all persons who are required to file export information under Title 13, U.S.C., Chapter 9, file such information through the AES. The filing of SED information on paper will be eliminated (Option 1). This law also imposes penalties for delayed filings, for failure to file, filing of false or misleading information and for furthering other unlawful activities. A full description of Public Law 107–228, Section 1404, can be found at no cost on the Library of Congress Web site at *http://www.thomas.gov*.

In the future, the Census Bureau will issue proposed and final rules in the **Federal Register**, providing for implementation of the AES mandatory filing requirement and allowing the public to comment. The Census Bureau also will issue regulations regarding imposition of the penalties, both civil and criminal, for the late filing, failure to file, and false filing of export information and furtherance of other illegal activities through the AES. These regulations will provide for

administrative proceedings for imposition of a civil penalty for violation(s) of Public Law 107–228. The authority to enforce penalty provisions of Public Law 107–228 will be delegated to the Office of Export Enforcement of the Bureau of Industry and Security, U.S. Department of Commerce, and/or the U.S. Department of Homeland Security.

In addition, the Census Bureau will address other issues in the forthcoming rulemaking process discussed above. Because the changes discussed above will result in a major revision of the Foreign Trade Statistics Regulations, we plan to use this as an opportunity to improve the regulations' clarity and readability. It is possible that we could make some additional changes to the rules as part of this process.

An additional purpose of this notice is to announce and request comment on the Census Bureau's intention, subject to agreement with the CBP and other federal agencies participating in the AES, to modify the AES Option 4 post-departure filing program. Currently, Option 4 is a method of post-departure filing that considers the trade community's business practices and also provides for an approval process that ensures that only the most compliant companies are approved for this method of filing. With Option 4 privileges, shipment information can be transmitted to the AES no later than ten working days from the date of exportation. (Refer to Foreign Trade Statistics Regulations, title 15, Code of Federal Regulations, part 30, sections 30.61 and 30.62, for information on AES filing Option 4.)

The Census Bureau also has had numerous discussions over the past several months with the trade community and several federal government agencies regarding a proposal to develop and implement the AES Filer Licensing and Permit Program. After consultation both internally and externally, the Census Bureau has decided not to move forward with the development and implementation of an AES filer licensing program concurrently with requiring full mandatory electronic filing of export information through the AES. However, the Census Bureau will continue to explore the need for an AES filer licensing program.

Executive Orders

This program notice has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. The forthcoming rules will contain a collection of information subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). In accordance with the PRA, this collection of information will be submitted to OMB for approval.

Program Change

The actual effective date of full AES mandatory filing requirements and implementation of the penalty provision regarding mandatory filing are dependent upon the publication and implementation of final regulatory amendments by the Census Bureau. Proposed and final rules defining the regulatory revisions that will be made to implement the legislation will be published in the **Federal Register**, as discussed above.

Dated: October 16, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–26576 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 334

[Docket No. 1978N–036L]

RIN 0910–AA01

Laxative Drug Products for Over-the-Counter Human Use; Reopening of the Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening until January 20, 2004, the administrative record for the rulemaking for over-the-counter (OTC) laxative drug products to accept comments and data concerning these drug products that have been filed with FDA's Division of Dockets Management, because the administrative record officially closed at various times during the course of this rulemaking. The administrative record will remain open until January 20, 2004, to allow for public comment on the comments and data being accepted into the rulemaking at this time. This action is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments and data by January 20, 2004.

ADDRESSES: Submit written comments and data 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: Mary S. Robinson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has, on numerous occasions, received new data and information bearing on OTC drug panel reports and proposed monographs after the closing of the administrative record in a rulemaking proceeding. Under § 330.10(a)(7)(iii) (21 CFR 330.10(a)(7)(iii)), new data and information may be submitted within 12 months after publication of a tentative final monograph (TFM). Within 60 days after this 12-month period ends, comments on the new data and information may be submitted (see § 330.10(a)(7)(iv)). Under § 330.10(a)(10)(i), the administrative record closes at the end of this 60-day period.

FDA published a TFM on laxative drug products for OTC human use on January 15, 1985 (50 FR 2124). On a number of occasions since the TFM was published, FDA reopened the administrative record for this rulemaking for various reasons. (See table 1 of this document for reopening dates and reasons.)

TABLE 1.—CHRONOLOGY OF THE OTC LAXATIVE DRUG PRODUCTS RULEMAKING PUBLICATIONS

Federal Register date and cite	Document
January 15, 1985 (50 FR 2124)	Proposed Rule (TFM) to Establish a Monograph for OTC Laxative Drug Products
October 1, 1986 (51 FR 35136)	TFM Amendment to Modify the Directions for Use and Dosages of OTC Bulk-Forming Laxatives
June 2, 1992 (57 FR 23174)	Notice to Reopen the Administrative Record to Accept Data and Information on Stimulant Laxative Active Ingredients Derived from Senna and Data on the Combination of Psyllium and Bran Active Ingredient
September 2, 1993 (58 FR 46589)	TFM Amendment to Include Docusate Salts, i.e., Docusate Calcium, Docusate Potassium, and Docusate Sodium, as Generally Recognized as Safe and Effective (GRASE) and Not Misbranded
March 31, 1994 (59 FR 15139)	TFM Amendment to Limit the OTC Drug Container Size for Sodium Phosphates Oral Solution to Not Greater Than 90 Milliliters (ml) (3 ounces (oz)) and to Add Warning
September 2, 1997 (62 FR 46223)	TFM Amendment to Reclassify the Stimulant Laxatives Danthron and Phenolphthalein from Category I (GRASE and Not Misbranded) to Category II (Not GRASE or Misbranded)
May 21, 1998 (63 FR 27886)	TFM Amendment to Include Additional General and Professional Labeling for Oral and Rectal Sodium Phosphates Drug Products
June 19, 1998 (63 FR 33592)	TFM Amendment to Reclassify the Stimulant Laxative Ingredients Aloe, Bisacodyl, Cascara Sagrada, and Senna Preparations from Proposed Category I to Category III (More Data Needed)
December 9, 1998 (63 FR 67817)	Notice of Withdrawal of Proposed TFM Amendment for Additional Professional Labeling for Oral and Rectal Sodium Phosphates Drug Products with Intent to Repropose
August 5, 2003 (68 FR 46133)	TFM Amendment to Reclassify the Bulk-Forming Laxative Psyllium Ingredients (Psyllium (Hemi-Cellulose), Psyllium Hydrophilic Mucilloid, Psyllium Seed, Psyllium Seed (Blond), Psyllium Seed Husks, Plantago Ovata Husks, and Plantago Seed)) in a Granular Dosage Form From Proposed Category I to Category II

Under § 330.10(a)(7)(v), new data and information submitted after the administrative record closed, before the establishment of a final monograph (FM), are considered a petition to amend the monograph and are to be considered only after a FM has been published unless FDA finds that good cause has been shown that warrants earlier consideration. Further, under § 330.10(a)(10)(ii), FDA shall make all decisions and issue all orders under § 330.10 in the FM solely on the basis of the administrative record and shall not consider data or information not included as part of the administrative record.

FDA has received new data and information submitted to the rulemaking for OTC laxative drug products after the administrative record closed on the various dates after the TFM amendments listed in table 1 of this document (excluding August 5, 2003, for which the administrative record remains open until November 3, 2003). In some cases, interested persons submitted a petition to reopen the record. In other cases, they submitted new data and information to the Division of Dockets Management as comments on the amended TFM. A number of the petitions and comments submitted to the amended TFM contain new data and information.

FDA has previously answered a number of these petitions (Refs. 1 through 7), and its response has been a final action on the petition. Thus, the current reopening of the administrative record does not include further comment on or consideration of the issues in these petitions. A summary of these petitions is included in table 2 of this document.

TABLE 2.—SUMMARY OF CITIZEN PETITIONS ON WHICH FDA HAS TAKEN FINAL ACTION

Docket code	Date of letter	Action	Subject
PDN14	June 4, 1996	Denial of CP18	Magnesium Citrate in Other Ddosage Forms
PDN4	August 22, 1997	Denial of CP14	Two 45 Milliliter Doses of Sodium Phosphates Oral Solution 10 to 12 Hours Apart as a Bowel Cleansing System

TABLE 2.—SUMMARY OF CITIZEN PETITIONS ON WHICH FDA HAS TAKEN FINAL ACTION—Continued

Docket code	Date of letter	Action	Subject
PDN5	August 22, 1997	Denial of CP16	Time to Action Statement for Enema Dosage of Glycerin
PDN6	September 5, 1997	Denial of CP13	Sorbitol in an Oral Dosage Form
ANS4	October 15, 1997	Denial of CP17	1,200 Milligram Single Dose of Magnesium Hydroxide
PDN7	January 7, 1998	Denial of CP23	Magnesium Citrate Powder for Oral Solution
PDN11	July 2, 2001	Denial of CP20 and response to C205	Bowel Cleansing System Using a Large Volume Tap Water Enema as the Final Cleansing Step

Because the data in other petitions and comments are relevant to the final classification of conditions for marketing OTC laxative drug products under the FM, FDA has determined that good cause exists to consider these new data and information in developing the FM for these products. By this document, FDA announces that it is treating all of these submissions (excluding the petitions listed in table 2 of this document), received after the administrative record closed at various times, as petitions to reopen the administrative record, and is granting the petitions by allowing the new data and information contained therein to be included in the administrative record for the rulemaking for OTC laxative drug products.

II. Reopening of the Administrative Record

Accordingly, FDA is reopening the administrative record for this rulemaking to provide the following actions: (1) Accept data and information previously submitted to the Division of Dockets Management after the administrative record closed following publication of the TFM and the various reopenings of the record listed in table 1 of this document and (2) provide interested persons an opportunity to submit comments on these data and information before the closing of the record.

FDA is providing a period of 90 days for these comments and new data and information to be submitted. Interested persons have already had an opportunity to submit objections or requests for an oral hearing on the amended TFM. Thus, this reopening of the administrative record to submit comments and information does not include submission of objections and requests for an oral hearing. Any comments at this time should specifically identify the data and information on which the comments are being provided. In addition, only new information related to the submissions being included in the administrative record at this time should be submitted.

Any data and information previously submitted to this rulemaking need not be resubmitted. In establishing an FM, FDA will consider only comments, data, and information submitted prior to the closing of the administrative record following this current reopening.

On August 5, 2003, FDA reopened the administrative record to reclassify the bulk-forming laxative psyllium ingredients (psyllium (hemicellulose), psyllium hydrophilic mucilloid, psyllium seed, psyllium seed (blond), psyllium seed husks, plantago ovata husks, and plantago seed)) in a granular dosage form from proposed Category I to Category II. Comments and information in response to that reopening of the administrative record should be submitted by November 3, 2003.

III. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or three paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) under Docket No. 1978N–036L and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. PDN14.
2. Comment No. PDN4.
3. Comment No. PDN5.
4. Comment No. PDN6.
5. Comment No. ANS4.
6. Comment No. PDN7.
7. Comment No. PDN11.

Dated: October 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26570 Filed 10–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133791–02 and REG–105606–99]

RIN 1545–BABB and 1545–AX05

Credit for Increasing Research Activities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations that were published in the **Federal Register** on July 29, 2003 (68 FR 44499). This regulation relates to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control.

FOR FURTHER INFORMATION CONTACT: Jolene J. Shiraishi at (202) 622–3120 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 41 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–133791–02; REG–105606–99), which was the subject of FR Doc. 03–17870, is corrected as follows:

1. On page 44500, column 1, in the preamble under the caption **ADDRESSES**, last paragraph, second line, the language ''IRS Auditorium (7th Floor), Internal'' is corrected to read ''Room 4718, Internal''.

§ 1.41–6 [Corrected]

2. On page 44503, column 3, § 1.41–6(d), paragraph (ii)(B) (*3*) of *Example 1*, last line in column 3, the language ''minimum). The group's fixed-base'' is corrected to read ''maximum). The group's fixed-base''.

3. On page 44504, column 3, § 1.41–6(d), paragraph (ii)(B)(*3*) of *Example 2*, column 3 fourth line from the bottom the language ''(the statutory minimum). The group's fixed'' is corrected to read ''(the statutory maximum). The group's fixed''.

Cynthia E. Grigsby,

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

[FR Doc. 03–26684 Filed 10–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–110385–99]

RIN 1545–AX39

Partial Withdrawal of Proposed Regulations Relating to Changes in Entity Classification.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of a notice of proposed rulemaking published on November 29, 1999, addressing certain transactions that occur within a specified period before or after a foreign entity changed its classification to disregarded-entity status.

DATES: Proposed § 301.7701–3(h) is withdrawn as of October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1996, Treasury and IRS published in the **Federal Register** (61 FR 66584) final regulations (TD 8697) relating to the classification of business entities under section 7701 (check-the-box regulations). On November 29, 1999, Treasury and the IRS published in the **Federal Register** (64 FR 66591) a notice of proposed rulemaking (REG–110385–99) proposing to amend §§ 301.7701–2 and 301.7701–3 of the current check-the-box regulations (proposed regulations). A public hearing on the proposed regulations was held on January 31, 2000. In addition, written comments were received. Most of the written and oral comments related to proposed § 301.7701–3(h), which provided a rule that would have operated to change the classification of a foreign disregarded entity if a so-called ''extraordinary transaction'' occurred one day before or within one year after the election to treat the entity as disregarded. In general, commentators criticized the approach adopted in this rule as overly broad and expressed concern that it would mitigate the increased certainty promoted by the check-the-box regulations in 1996.

After considering the comments received, Treasury and the IRS issued Notice 2003–46 (2003–28 IRB 53) on June 26, 2003, announcing the intention to withdraw the extraordinary transaction rule in proposed § 301.7701–3(h) and to finalize the remaining provisions of the proposed regulations addressing grandfathered entities and the relevancy of classification status.

With the publication of this document, proposed § 301.7701–3(h) is withdrawn. Final regulations adopting without substantive change the portions of the proposed regulations relating to grandfathered entities and the relevancy of classification status are being published in the Rules and Regulations section elsewhere in this issue of the **Federal Register**. These final regulations do not adopt the extraordinary transaction rule in proposed § 301.7701–3(h).

Drafting Information

The principal author of this withdrawal notice is Ronald M. Gootzeit, Office of Associate Chief Counsel (International). However, other personnel from Treasury and the IRS participated in its development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Partial Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 301.7701–3(h) of the notice of proposed rulemaking published in the **Federal Register** on November 29, 1999, (64 FR 66591) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–26546 Filed 10–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD00

Amistad National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may be used in Amistad National Recreation Area, Texas. This proposed rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS *Management Policies 2001* directs individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: Comments must be received by December 22, 2003.

ADDRESSES: Comments on the proposed rule should be sent to the Superintendent, Amistad National Recreation Area, HRC 3 Box 5J, Del Rio, Texas 78840. Comments may also be sent by email to *amis@den.nps.gov.* If you comment by e-mail, please include

''PWC rule'' in the subject line and your name and return address in the body of your Internet message. Also, you may hand deliver comments to Amistad National Recreation Park, 4121 Highway 90 West, Del Rio, Texas.

For additional information see ''Public Participation'' under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Additional Alternatives

The information contained in this proposed rule supports implementation of portions of the preferred alternative in the Environmental Assessment published April 3, 2003. The public should be aware that two other alternatives were presented in the EA, including a no-PWC alternative, and those alternatives should also be reviewed and considered when making comments on this proposed rule.

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except that a grace period was provided for 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed to continue.

Description of Amistad National Recreation Area

Amistad National Recreation Area lies along the United States-Mexico border near Del Rio, Texas. The unit consists of 57,292 acres of land and water and is a man-made reservoir resulting from the construction of a dam at the confluence of Devils River and the Rio Grande. The reservoir is 1,117 feet above sea level at the normal conservation level, and the park boundary continues 83 miles northwest up the Rio Grande, 25 miles north up the Devils River, and 14 miles north up the Pecos River. The park boundary varies but is generally at the elevation mark of 1,144.3 feet above mean sea level, and the lake level fluctuates in relation to this. The international boundary between the United States and Mexico falls in the middle of the Rio Grande River. The International Boundary and Water Commission has placed buoys in the center of the channel for the first 28 miles but the reservoir is otherwise unmarked. The Mexico side of the reservoir does not have any protected status, thus the NPS does not generally consult with Mexican officials on matters such as boating management in a formal sense.

Amistad is home to a rich archeological record and world-class rock art. Within or immediately adjacent to park boundaries are four archeological districts and one site listed on the National Register of Historical Places.

Amistad National Recreation Area supports a wide variety of boating activities throughout the year, including PWC use, powerboating, waterskiing, houseboating, boat fishing, sightseeing by boat, sailboating, sailboarding, canoeing, and kayaking. Amistad receives over 1,000,000 visitors a year and issues approximately 5,000 lake use permits annually.

Purpose of Amistad National Recreation Area

The purpose of Amistad National Recreation Area is to provide visitors and neighbors with opportunities and resources for safe, high-quality public outdoor recreation and use of Lake Amistad; to develop and maintain facilities necessary for the care and accommodation of visitors; and to support the concepts of stewardship and protection of resources and environmental sustainability by practicing and interpreting their application in a unit of the national park system.

Significance of Amistad National Recreation Area

According to Amistad's 2001–2005 strategic plan, the primary significance of Amistad National Recreation Area can be summarized as: (1) Offering diverse water-based recreational opportunities, especially fishing; (2) interpreting exceptional examples of Lower Pecos archeology and rock art and; (3) commemorating a water conservation partnership between the United States and Mexico.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *''

16 U.S.C. 1a–1 states, ''The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *''

NPS' regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach—as with the United States Coast Guard; and non-navigable waters that are administered by the NPS, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to ''promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *'' (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Amistad National Recreation Area

The park began regularly documenting PWC use on July 4, 1992, but the earliest record is from March 1989, when a violation notice was issued to an operator for reckless and negligent behavior near a swim beach. PWC use became more common between 1990–91, and in May 2001 park staff began collecting more specific PWC use data. The highest use generally occurs in summer from Friday through Sunday, and in 2001 ranged from as low as 1 PWC per day up to 35 per day. Park staff believes that PWC use is increasing at approximately 1.5% per year.

Data collected during 2001 and 2002 show that PWC users are a consistent part of the total boating population of the lake, and holidays show the highest amount of use. The highest PWC-use weekday was Wednesday, July 4, 2001

(a holiday), when 33 PWC trailers were observed parked at boat ramp parking lots throughout the recreation area. On that same day, 88 non-PWC boat trailers were observed in the same parking lots.

The highest use for a non-holiday weekend occurred on Saturday, June 23, 2001, when 26 PWC trailers were observed in parking lots throughout the recreation area, compared to 270 non-PWC boat trailers in the same parking lots. Visitors were attracted by the 12 largemouth black bass tournaments taking place at the lake that day and the pleasant weather conditions (bass tournaments occur every weekend during the summer). The highest holiday weekend use day was Sunday, May 26, 2002, when 38 PWC trailers (and 296 non-PWC boat trailers) were observed at launch ramps.

On busy summer weekends, PWC use can comprise between 8% and 20% of total boating activity. On summer weekdays this percentage tends to increase due to fewer out-of-town bass tournament fishermen on the lake. PWC use on summer weekdays can comprise between 19% and 40% of total boating activity in the evenings after 6:30 p.m., when local PWC owners visit the lake after work.

PWC use occurs primarily between May and September, with April and October also showing steady visitation. Weekday PWC users are primarily local residents who arrive after work, while weekend users come from areas farther away. PWC users are usually on the water all day on weekends. Park staff has indicated that PWC users generally operate for two to three hours on weekday evenings, and from four to eight hours on weekends. The increased amount of time in the water can be attributed to users taking turns riding one craft.

PWC operators have been observed traveling throughout the lake, either singly, in pairs, in small groups, or in association with a motorboat or houseboat. Within Amistad National Recreation Area, PWC use has been allowed wherever motorized boats have had access. This includes the arm of the Rio Grande, the Devils River, San Pedro Canyon, and the Pecos River.

Areas of heaviest PWC use are Devils River north of buoy P and San Pedro Canyon east of buoy A. Most of the personal watercraft launching from Rough Canyon travel up Devils River. In addition, many personal watercraft launching from Diablo East and Spur 454 travel up Devils River past buoy P. In contrast, only one or two watercraft travel up the Rio Grande past buoy 28. No PWC have been seen using the Pecos River.

The San Pedro arm of the lake (at the end of Spur 454) attracts a large number of PWC operators because it is one of the few areas where bystanders, usually friends and relatives of the PWC operators, can drive close to the shoreline to observe PWC activity or take turns riding. As a result, this location is one of the primary destinations for PWC operators. Another popular destination for PWC operators is the Indian Springs area in the upper Devils River section of the lake. While en route to Indian Springs, PWC operators tend to either travel in a direct line or explore some or all of the coves between their launch and destination points.

People who rent the 56- to 65-foot houseboats from Amistad Lake Marina often tow personal watercraft with the houseboat (two or three personal watercraft have been observed being towed). The boats are permitted to travel to most areas, so PWC use is dispersed. These tagalongs are the only personal watercraft likely to use the upper Rio Grande area (north of buoy 28).

Park staff has never seen personal watercraft used on the Pecos River. However, some PWC users may access the Pecos River without park staff knowledge. The park estimates that if PWC use occurs in the Pecos River, it would amount to less than 10 craft per year.

Resource Protection and Public Use Issues

Amistad National Recreation Area Environmental Assessment

As a companion document to this proposed rule, NPS has issued the *Personal Watercraft Use Environmental Assessment for Amistad National Recreation Area.* The Environmental Assessment (EA) was open for public review and comment from April 3, 2003, through May 3, 2003. Copies of the environmental assessment may be downloaded at *http://www.nps.gov/amis/pwc.pdf* or obtained at park headquarters Monday through Friday, 8am to 5pm, just west of Del Rio at 4121 Hwy 90 W. Mail inquiries should be directed to: Amistad National Recreation Area, HCR 3 Box 5J, Del Rio TX 78840, Phone (830) 775–7491.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Amistad to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012.

The environmental assessment evaluates three alternatives concerning the use of personal watercraft at Amistad National Recreation Area. Alternative A would allow PWC use under an NPS special regulation in accordance with past park practices, and state regulations. That is, after the effective date of a final rule, PWC use would be the same as it was before November 7, 2002 when the park closed to PWC use under the service-wide regulations at 36 CFR 3.24. Alternative B would continue PWC use under a special regulation, but specific limits and use areas would be defined. The no-action alternative would eliminate PWC use entirely within this national park system unit.

Based on the environmental analysis prepared for PWC use at Amistad National Recreation Area, alternative A is the preferred alternative and is also considered the environmentally preferred alternative because it would best fulfill park responsibilities as trustee of this sensitive habitat; ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attain a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

This document proposes regulations to implement alternative A at Amistad National Recreation Area.

The NPS will consider the comments received on this proposal, as well as the comments received on the Environmental Assessment when making a final determination. In the final rule, the NPS will implement alternative A as proposed, or choose a different alternative or combination of alternatives. Therefore, the public should review and consider the other alternatives contained in the Environmental Assessment when making comments on this proposed rule.

The following summarizes the predominant resource protection and public use issues associated with PWC use at Amistad National Recreation Area. Each of these issues is analyzed in the *Amistad National Recreation Area, Personal Watercraft Use Environmental Assessment.*

Water Quality

Most research on the effects of personal watercraft on water quality focuses on the impacts of two-stroke engines, and it is assumed that any impacts caused by these engines also

apply to the personal watercraft powered by them. There is general agreement that two-stroke engines (including personal watercraft) discharge a gas-oil mixture into the water. Fuel used in PWC engines contains many hydrocarbons, including benzene, toluene, ethylbenzene, and xylene (collectively referred to as BTEX). Polycyclic aromatic hydrocarbons (PAHs) also are released from boat engines, including those in personal watercraft. These compounds are not found appreciably in the unburned fuel mixture, but rather are products of combustion. Discharges of all these compounds—BTEX and PAHs—have potential adverse effects on water quality.

Under the proposed regulation, PWC would be allowed within Amistad National Recreation Area with some locational restrictions. Numbers of personal watercraft using the reservoir and adjoining waters during a high-use day would likely increase from an average of 32 per day in 2002 to 37 per day in 2012, an average increase of 1.5% per year. Based on current observations it is assumed that 14 personal watercraft would operate in the Amistad Reservoir and Rio Grande upstream of the reservoir in 2002, increasing to 16 by 2012; and 18 personal watercraft would operate in Devils River and San Pedro Canyon, increasing to 21 by 2012.

Continuing PWC use under this regulation, as it was before November 7, 2002, was evaluated in the EA and the analysis determined that PWC use would have negligible adverse effects on water quality because of improved emissions controls from EPA in place by 2012. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to water quality, *see* page 91 of the Environmental Assessment.) The EA analysis found that all pollutant loads would be well below ecotoxicological benchmarks and human health criteria. Cumulative impacts from PWC and motorized boat use would also be negligible through improved emission controls. This proposed rule was also reviewed as required by NPS Management Policies to determine if park resources would be impaired. Based upon the findings in the EA, the NPS has concluded that PWC use would not result in an impairment of the water quality resource.

Air Quality

PWC emit various compounds that pollute the air. In the two-stroke engines commonly used in personal watercraft, the lubricating oil is used once and is expelled as part of the exhaust; and the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter (PM), and carbon monoxide (CO). Personal watercraft also emit fuel components such as benzene that are known to cause adverse health effects. Even though PWC engine exhaust is usually routed below the waterline, a portion of the exhaust gases go into the air. These air pollutants may adversely impact park visitor and employee health, as well as sensitive park resources.

For example, in the presence of sunlight VOC and NO_X emissions combine to form ozone. Ozone causes respiratory problems in humans, including cough, airway irritation, and chest pain during inhalations. Ozone is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. Carbon monoxide can affect humans as well. It interferes with the oxygen carrying capacity of blood, resulting in lack of oxygen to tissues. NO_X and PM emissions associated with PWC use can also degrade visibility. NO_X can also contribute to acid deposition effects on plants, water, and soil. However, because emission estimates show that NO_X from personal watercraft are minimal (less than 5 tons per year), acid deposition effects attributable to personal watercraft use are expected to be minimal.

Under the proposed rule, PWC use would be allowed to operate under the same conditions as were in effect before November 7, 2002. PWC users could operate wherever motorized vessels are authorized. The number of personal watercraft using Amistad is predicted to increase annually by approximately 1.5%, based on current trends at the unit. Baseline data for the 2001/2002 season at Amistad indicate annual use at approximately 640 personal watercraft, with each machine assumed to operate on the water for an average of four hours per day. The predominantly two-stroke engine technology would be replaced gradually over time in accordance with the Environmental Protection Agency's (EPA) requirements for engine manufacturers so that by 2012 most personal watercraft will be the cleaner burning four-stroke type.

Allowing PWC use at Amistad National Recreation Area at the previous levels would result in negligible adverse impacts for all pollutants. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to air quality see page 100 of the Environmental Assessment.) Cumulative emission levels would be negligible for PM_{10}, HC, VOC, and NO_X. Cumulative CO emissions would be at a moderate adverse level for both the short and long term. Over the long term NO_X emissions would increase slightly, with a negligible adverse effect. This alternative would not alter existing air quality conditions, with future reductions anticipated in PM_{10}, HC, and VOC emissions due to improved emission controls. Therefore, the proposed rule would not result in an impairment of air quality.

Soundscapes

The primary soundscape issue relative to PWC use is that other visitors may perceive the sound made by personal watercraft as an intrusion or nuisance, thereby disrupting their experiences. This disruption is generally short term because personal watercraft travel along the shore to outlying areas. However, as PWC use increases and concentrates at beach areas, related noise becomes more of an issue, particularly during certain times of the day. Additionally, visitor sensitivity to PWC noise varies from backcountry users (more sensitive) to swimmers at popular beaches (less sensitive). Amistad's backcountry visitors consist of boaters who camp at undesignated campsites along the shoreline.

The biggest difference between noise from PWC and that from motorboats is that PWC repeatedly leave the water, which magnifies noise in two ways. Without the muffling effect of water, the engine noise is typically 15 dBA louder than it would be while operating continually underwater and the smacking of the craft against the water surface results in a loud ''whoop'' noise or series of them. With the rapid maneuvering and frequent speed changes, the impeller has no constant ''throughput'' and no consistent load on the engine. Consequently, the engine speed rises and falls, resulting in a variable pitch. This constantly changing noise is often perceived as more disturbing than the constant noise from motorboats.

PWC users tend to operate close to shore, to operate in confined areas, and to travel in groups, making noise more noticeable to other recreationists. Motorboats traveling back and forth in one area at open throttle or spinning around in small inlets also generate complaints about noise levels; however, most motorboats tend to operate away from shore and to navigate in a straight line, thus being less noticeable to other recreationists.

Under the proposed rule, noise from personal watercraft would continue to

have short-term, minor, adverse impacts at most locations throughout the use season, and short-term, minor to moderate, adverse impacts along the reservoir shoreline and at shoreline camping locations because personal watercraft could be heard occasionally throughout the day during the peak visitor season. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to soundscape see page 111 of the Environmental Assessment.) Impact levels would be related to the number of personal watercraft, as well as the sensitivity of other visitors. Over the long term newer engine technologies could result in reduced noise levels.

Cumulative noise impacts from personal watercraft, motorboats, and other visitors would be short term and minor to moderate because these sounds would be heard occasionally throughout the day. For the most part, natural sounds would still predominate at most locations within the national recreation area. The highest sound impacts would occur near boat launches, beaches, and marinas. Therefore, this alternative would not result in an impairment of the Amistad National Recreation Area's soundscape.

Wildlife and Wildlife Habitat

Some research suggests that personal watercraft affect wildlife by interrupting normal activities. This is thought to be caused by PWC speed, noise, and access. Flight response is the most likely impact of PWC use. PWC use can affect an animal's ability to feed, rest, and breed if it is unable to adapt to the disturbance caused by PWC operations. Impacts to threatened or endangered or sensitive species are documented under ''Threatened, Endangered, or Special Concern Species.''

Under the proposed rule, PWC use could affect wildlife wherever use is authorized. Numbers of personal watercraft using the reservoir during a high-use day would likely increase from an average of 32 per day in 2002 to 37 per day in 2012, an average increase of 1.5% per year. While some PWC use occurs year-round, most use occurs from May to September. PWC use is most frequent during weekends, followed by weekday evening hours. While personal watercraft would be distributed throughout the reservoir, the primary location for potential impacts would be where PWC use is most prevalent: the San Pedro arm of the reservoir (at the end of Spur 454) and the Indian Springs area in the upper Devils River. Disturbance could occur on the Rio Grande from PWC users beaching their craft. The Pecos River contains rocks that would make it difficult for PWC operators to disturb wildlife there, and only about 10 PWC visits occur there each year. Since no PWC operation would be allowed between sundown and sunrise, impacts are less likely for nocturnal than for diurnal species.

Wildlife are most likely to be found near the shoreline due to habitat constraints, with few non-aquatic species present on the water surface 200 feet (or more) from shore. Under 36 CFR part 3, Amistad adopts Texas State laws and regulations. Texas boating regulations require that when a PWC user travels to a shoreline destination, the watercraft must be slowed to a flat wake speed, thus allowing wildlife to easily move out of the way or wildlife on land are less disturbed by the PWC presence. There have been no documented cases of PWC operators deliberately harassing or chasing birds or other wildlife on Lake Amistad, and no documented collisions with waterfowl or wildlife.

Waterfowl migrate to Amistad during the winter when there is less PWC use. The primary season for PWC use is May to September and most personal watercraft are not used in the early spring due to water and air temperatures. Therefore it is unlikely that most wildlife would be disturbed during the breeding season. During rearing, PWC use could cause short-term temporary effects when the craft are beached on land. Due to the low habitat productivity, as well as the low number of PWC users, impacts to wildlife and wildlife habitat would be negligible at most locations. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to wildlife and wildlife habitat *see* pages 116–117 of the Environmental Assessment.)

As noted in the ''Water Quality'' section, continued use of PWC would create pollutant loads that are well below water quality criteria and ecotoxicological benchmarks, so there would likely be no or negligible impacts to fish related to water contamination. Also, fish generally will flee to avoid personal watercraft, and PWC use is not expected to significantly disrupt any spawning areas, since a majority of the spawning activity occurs during the shoulder season of PWC use (February through April).

Since PWC users are required to operate at flat wake speed within 50 feet of the shoreline (in accordance with Texas Water Safety Act), impacts on wildlife and wildlife habitat would be negligible at most locations. The effects from PWC speed and noise or proximity to wildlife would be limited as well. In addition, few wildlife occur on the open water, where speeds are higher. On a cumulative basis, all visitor activities would continue to have negligible to minor adverse effects on wildlife and wildlife habitat. All wildlife impacts would be temporary and short term. Implementation of this proposal would not result in an impairment to wildlife or wildlife habitat.

Threatened, Endangered, or Special Concern Species

The Endangered Species Act (16 U.S.C 1531 *et seq.*) mandates that all Federal agencies consider the potential effects of their actions on species listed as threatened or endangered. If the National Park Service determines that an action may adversely affect a federally listed species, consultation with the U.S. Fish and Wildlife Service is required to ensure that the action will not jeopardize the species' continued existence or result in the destruction or adverse modification of critical habitat. With regard to the federal status species, the American peregrine falcon, black-capped vireo, brown pelican, interior least tern, and whooping crane (all listed as endangered) may occur within Amistad National Recreation Area. The arctic peregrine falcon, bald eagle, and piping plover, and Devils River minnow (all listed as threatened) may also occur within the park.

Among the listed species, the interior least tern has habitat closest to the use areas. Interior least terns lay eggs in the ground and often use the islands within the lake as nesting areas. The park closes all tern nesting areas to public use, including PWC and other vessel access, by posting signs in the water. Other species of birds always nest high enough above ground not to be affected by PWC-related wave action or shoreline access.

Overall, PWC use at Amistad under this proposed rule would have no effect or would not likely adversely affect any federal or state listed species, since most identified species are either not present as permanent residents, do not have preferred habitat in PWC use areas, or are not normally accessible. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to threatened, endangered, or special concern species see page 122 of the Environmental Assessment.) Cumulative effects from all park visitor activities are not likely to adversely affect these species since the identified species are not present, do not nest in the park, or are not accessible during the course of normal visitor activities, which are primarily water-based recreation. Therefore, this proposed rule would not result in an impairment of

threatened, endangered, or special concern animal or plant species.

Shoreline Vegetation

Under the proposed regulation, PWC operators would be allowed to travel along the shoreline wherever motorized vessels are allowed so long as they are operated at flat wake speed within 50 feet of the shore. Hidden Cave Cove, Painted Canyon, and Seminole Canyon would remain closed under the proposed rule to all vessels. Vessels would be prohibited from landing on islands during Interior Least Tern nesting activities. All vessels operating within harbors, mooring areas, and any other areas marked by buoys, are required to operate at flat wake speed only. While personal watercraft use occurs throughout the reservoir, the primary location for potential impacts would be where PWC use is most prevalent. These areas include the San Pedro arm of the reservoir (at the end of Spur 454) and the Indian Springs area in the upper Devils River arm of the lake. Other impacts include negligible short-term wave action and trampling caused by PWC operators landing their craft and walking on the shore.

Fluctuating water levels create more potential for short- and long-term erosion and impacts to shoreline vegetation than any other sources, followed by wind, other motorized boats, and personal watercraft. Fluctuating water levels greatly deter the development of hydrophytic shoreline vegetative or aquatic vegetation and largely prevent the growth of shoreline vegetation.

Allowing PWC use at Amistad National Recreation Area would have negligible adverse impacts to shoreline vegetation over the short and long term, with no perceptible changes in plant community size, integrity, or continuity. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to shorelines see page 130 of the Environmental Assessment.)

Visitor Experience

Impacts on PWC Users. There would be no change to PWC use or activity as compared to the conditions during 2002. Therefore, the proposed rule would have no new effects on the experiences of PWC users at Amistad National Recreation Area.

Impacts on Other Boaters. Other boaters to Amistad National Recreation Area would continue to interact with PWC operators. Generally, few nonmotorized craft use Lake Amistad (sea kayaks and canoes), so interactions with these user groups are infrequent. Motorboats are more likely to interact with PWC. There are three locations with the potential for boat/PWC interactions: near the Spur 454 boat ramp, on the Devils River upstream from the Rough Canyon boat ramp, and directly in front of the Diablo East harbor. Although no accidents or conflicts have been documented in these areas, the potential exists. Based on this analysis, the proposed rule would have negligible adverse effects on the visitor experience of other boaters for the existing and future conditions. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to visitor experience see page 130 of the Environmental Assessment.)

Impacts on Other Visitors. Swimmers, hikers, and other visitors would have contact with PWC users. San Pedro Canyon is a popular PWC destination, and new undesignated swim beaches in this area have become very popular on weekends, with as many as 60 swimmers at one beach. On July 4, 2001 a high of 14 PWC trailers were counted at Spur 454, which serves the San Pedro area. Boat ramps at Diablo East and 277 North also serve the San Pedro Canyon. PWC use would have moderate adverse effects on swimmers in San Pedro Canyon.

Receding lake levels have led to decreased visitation to park campgrounds. Because campgrounds are currently high above the lake level, contact between campers and PWC users is low. However, lake levels could rise, camping visitation could increase, and contact between the two groups could increase. PWC use would have negligible to minor adverse effects on visitors to park campgrounds and minor adverse effects at higher water levels.

Boaters often camp along the shoreline (outside park campgrounds) and may be affected by PWC use. However, because these undesignated campsites are located along the shore, campers would be exposed to motorized boat use as well as PWC use. It is likely that these campers move on after spending the night, and since PWC use is restricted to the hours between sunrise and sunset, they would experience little contact with PWC users. PWC use would have negligible adverse effects to these campers.

The primary activities at Amistad National Recreation Area that may affect visitor experiences include the number and activities of other visitors, and noise from motorboats. No other actions are currently planned that would affect PWC use or visitor experiences within the national recreation area. According to a 2001 visitor survey, most visitors are satisfied with their experiences at the park. Cumulative impacts related to the use of personal watercraft, motorized boats, and other visitor activities would be negligible over the short and long term because there would be little noticeable change in visitor experiences, even with projected PWC and boat use increases.

Continued PWC use at Amistad National Recreation Area would have negligible adverse impacts on experiences for most visitors in the short and long term. PWC use would have long-term, negligible, adverse impacts on shoreline campers, but long-term, minor adverse impacts on swimmers and other visitors using official park campgrounds and desiring an experience characterized predominantly by natural quiet. When related to other visitor activities, PWC use would not appreciably limit the critical characteristics of visitor experiences.

Cumulative effects of PWC use, other watercraft, and other visitors would continue to result in long-term, negligible to minor, adverse impacts, since there would be little noticeable change in visitor experiences. Most visitors would continue to be satisfied with their experiences at Amistad National Recreation Area.

Visitor Conflict and Safety

Few PWC accidents have been reported at Amistad National Recreation Area, and there have been some incident reports, most involving PWC users and swimmers or other boaters. Staff receive infrequent calls for assistance in locating a PWC operator who is overdue or ''missing.'' Running out of gas is also a concern and may be hazardous because of the vast size of the park. The park conducts regular boat patrols, which will help to identify potential PWC/visitor safety issues.

Divers may be present within the recreation area at submerged ranch home locations. No conflicts between PWC users and divers have been observed. Divers set buoys to identify their location, so PWC users should be able to avoid these areas and any resulting conflicts.

PWC speeds, wakes, and operations near other users can pose hazards and conflicts, especially to canoeists and sea kayakers. Currently very few nonmotorized boats are used in the national recreation area, but conflicts could occur with personal watercraft, particularly if PWC use increased as predicted. To date, few conflicts have been reported.

PWC User/Swimmer Conflicts. In 10 years it is estimated that an average 37 personal watercraft would be in use in the reservoir during peak use days. The

number of swimmers at the reservoir has been decreasing with reductions in lake levels, which has led to the creation of several undesignated swim beaches.

The greatest potential for conflict with swimmers is near Diablo East and San Pedro Canyon. This is where many of the park's visitors swim, and it includes popular PWC boat launches. Buoys warning motorized watercraft to keep out of the official swim areas were vandalized, and PWC users occasionally enter these areas. Amistad is working with the USCG to replace those buoys. Of the five designated swim beaches, all but one are in the area of Diablo East or San Pedro Canyon. Most currently experience little to no use due to low lake levels.

Of the three new undesignated swim beaches, one is also popular with PWC users. All are located in the San Pedro Canyon area. A total of approximately 80 to 120 swimmers use these beaches on busy summer weekend days. An estimated 20 to 25 personal watercraft are launched in this area during peak use days. The potential exists for an accident involving a swimmer, particularly if lake levels rise and swimmer visitation increases to previous levels. Due to the number of visitors involved, impacts at this location are predicted to be moderate adverse. Amistad maintains the authority to close areas to swimming or PWC use should the conflicts escalate. The NRA will also be seeking to increase buoys in swimming areas and work to coordinate land-based and water-based patrols to further mitigate the possibility of swimmer/PWC conflicts.

The remaining reservoir locations would have little or no conflict between PWC users and swimmers because designated and undesignated swim beaches are concentrated in the Diablo East and San Pedro Canyon areas. There is one designated swim beach at Rough Canyon, but the swim area currently has no water due to low lake levels. Thus, conflicts in other areas would constitute negligible, adverse impacts over the short and long term. All motorized vessels are prohibited from entering designated swimming areas. The recreation area continues to work with the USCG to install buoys informing boaters to ''Keep Out'' of swimming areas.

Overall, PWC use would have minor adverse impacts on swimmers at Amistad National Recreation Area. Impacts would be perceptible to a relatively small number of visitors at localized areas, primarily at San Pedro Canyon where the undesignated beaches exist.

PWC Users/Other Boater Conflicts. Other motorized watercraft are distributed throughout the reservoir. Their use patterns are not exactly the same as those for personal watercraft, but the two groups do use the same areas. Motorboats are concentrated in the Castle Canyon area, the Devils River area between the Devils Shores subdivision and Indian Springs, and the area in front of Amistad Dam. The same launch ramps that are popular with PWC users are also popular with motorboaters. The Spur 454 boat ramp, Devils River upstream of the Rough Canyon boat ramp, and the area in front of the Diablo East harbor have the most potential for conflicts between PWC users and motorboaters. These three launch areas experience the highest visitor use. Traffic gets congested in these areas, which increases the risk of collision and the potential for conflicts. Because both motorized boat and PWC use are projected to increase each year (2% and 1.5% respectively), the potential for conflicts could increase in this area, resulting in minor to moderate adverse impacts.

The remaining areas of the reservoir would experience negligible conflicts between PWC users and other motorboaters, due to the small number of watercraft being launched at these areas.

Overall, PWC use would continue to have minor adverse impacts on other motorized boat users at Amistad National Recreation Area. Impacts would be perceptible to visitors at localized areas, primarily at Spur 454, Devils River upstream of Rough Canyon, and the Diablo East harbor. Conflicts at other locations would remain negligible because use is lower, and conflicts would be less likely to occur.

Allowing PWC use would have short- and long-term, minor to moderate adverse impacts on visitor conflicts and safety in the areas near Spur 454, the Devils River upstream of Rough Canyon, and in front of the Diablo East harbor due to the number of visitors and boats present on high use days. Conflicts at other locations would remain negligible because use is lower, and conflicts would be less likely to occur.

Cumulative impacts related to visitor conflicts and safety would be minor to moderate for all user groups in the short and long term, particularly near the three areas listed above. Cumulative impacts in other segments would be negligible because of reduced use.

Cultural Resources

Under the proposed rule, PWC use would be allowed within Amistad National Recreation Area with few locational restrictions. PWC users would continue to have access to archeological and submerged cultural resources under this alternative. Four national historic districts within the national recreation area are listed on the National Register of Historic Places; additional sites are located outside the districts. Not all identified sites have been formally evaluated for national register eligibility.

The most likely impact to archeological and submerged cultural sites would result from PWC users landing in areas and illegally collecting or damaging artifacts. According to park staff, looting and vandalism of cultural resources is not a substantial problem. A direct correlation of impacts attributed to PWC users is difficult to draw, since many of these areas are also accessible to hikers or other watercraft users. Under this proposed rule the low number of PWC users within the national recreation area would have only minor adverse impacts on potentially listed archeological resources.

Allowing PWC use under this proposed regulation is not expected to negatively affect the overall condition of cultural resources because site specific condition inventories, surveys and mitigation would still be conducted. To further reduce the likelihood of damage to cultural resources, this rule proposes to close all or a portion of Hidden Cave Cove, Painted Canyon, Seminole Canyon and all terrestrial cave and karst features. Closing these areas will protect a variety of resources but most noteably the cultural resources located in these areas including cave drawings and lithic artifacts.

PWC use within the national recreation area could have minor adverse impacts on potentially listed archeological sites and submerged resources from possible illegal collection and vandalism. (For an explanation of terms such as ''negligible'' and ''adverse'' in regard to cultural resources *see* page 145 the Environmental Assessment.)

On a cumulative basis impacts to all visitor activities could result in minor to moderate adverse impacts on those resources that are readily accessible, due to the number of visitors and the potential for illegal collection or destruction. PWC use could have minor adverse impacts on cultural resources from possible illegal collection and vandalism.

Therefore implementation of this proposed rule would not result in an impairment of cultural resources.

The Proposed Rule

PWC use would be allowed under a special regulation in 36 CFR 7.79 and would be managed consistent with the management strategies in effect before November 7, 2002. PWC users could travel wherever other motorized vessels are allowed. Under the present ''Superintendent's Compendium,'' Hidden Cave Cove, Painted Canyon and Seminole Canyon are closed to all vessels. Due to Homeland Security concerns, the water extending 1000 feet from Amistad Dam is closed to all boating use, motorized and non-motorized. Consistent with the current ''Superintendent's Compendium'', the proposed rule prohibits all PWC users (and others under the Compendium authority), from landing in areas with interior least tern nesting colonies. Terns nest on islands and peninsulas on the lake from May 1 through August 31. To avoid disturbing nesting activity, these areas are closed to all public use during the nesting season, and signs are posted to warn visitors not to approach. Additionally, the staff at Amistad enforces 36 CFR part 3 regulations. These regulations adopt all non-conflicting State of Texas watercraft laws and regulations.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The National Park Service has completed the report ''Economic Analysis of Personal Watercraft Regulations in Amistad National Recreation Area'' (MACTEC Engineering, November 2002).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled ''Economic Analysis of Personal Watercraft Regulations in Amistad National Recreation Area'' (MACTEC Engineering, November 2002).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared a draft Environmental Assessment (EA). The EA was available for public review and comment from April 9, 2003 to May 3, 2003. Copies of the environmental assessment may be downloaded at *http://www.nps.gov/amis/pwc.pdf* or obtained at park headquarters Monday through Friday, 8am to 5pm, just west of Del Rio at 4121 Hwy 90 W. Mail inquiries should be directed to: Amistad National Recreation Area, HCR 3 Box 5J, Del Rio TX 78840, Phone (830) 775–7491.

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 have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

There are 17 tribes with historical ties to the lands of the Amistad NRA. However, none of those tribes have any

current association with Amistad nor are there any tribes with close geographic ties to the area. Since any actions the park proposes in this rule are not expected to have any effects on these 17 tribes, no consultation has occurred.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example § 7.79 Amistad Recreation Area. (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov.*

Drafting Information: The primary authors of this regulation are: Mark Morgan, Management Assistant, and Rick Slade, Chief of Interpretation, Amistad NRA; Sarah Bransom, Environmental Quality Division; and Kym Hall, NPS Washington, DC.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Amistad National Recreation Area, HCR 3 Box 5J, Del Rio TX 78840. You may also comment via the Internet to *amis@den.nps.gov.* Please also include ''PWC Rule'' in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver comments to Amistad National Recreation Park, 4121 Highway 90 West, Del Rio, Texas.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. Add new paragraph (d) to § 7.79 to read as follows:

§ 7.79 Amistad Recreation Area.

* * * * *

(d) *Personal Watercraft (PWC).*

(1) PWCs are allowed within Amistad National Recreation Area with the following exceptions:

(i) The following areas are closed to PWC use:

(A) Hidden Cave Cove (where marked by buoys), located on the Rio Grande.

(B) Painted Canyon (where marked by buoys), located on the Rio Grande.

(C) Seminole Canyon, starting 0.5 miles from the mouth of the Rio Grande.

(D) Government coves at Diablo East and Rough Canyon to include the water and shoreline to the top of the ridge/property line.

(E) All terrestrial cave and karst features.

(F) The Lower Rio Grande area below Amistad Dam.

(G) The water area extending 1000 feet out from the concrete portion of Amistad Dam.

(ii) PWC are prohibited from landing on any island posted as closed.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: October 14, 2003.

Paul Hoffman,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 03–26577 Filed 10–21–03; 8:45 am]

BILLING CODE 4310–70–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1208

RIN 3095–AB09

Nondiscrimination in Federally Assisted Programs—Implementation of Section 504 of the Rehabilitation Act of 1973

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to modify its regulations on nondiscrimination on the basis of disability to make it clear that the rules apply to recipients of NARA's National Historical Publications and Records Commission (NHPRC) grants, not just programs and activities conducted by NARA. We also propose to add detailed rules on nondiscrimination in employment practices that grant recipients must follow when they hire staff for the programs and projects. This proposed rule also updates compliance procedures, which apply to NARA and NHPRC grant recipients. Last, we are replacing the term ''handicap'' with ''disability'' throughout the entire regulation. This part applies to NARA and NHPRC grant recipients.

DATES: Comments are due by December 22, 2003.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to (301) 837–0319. Electronic comments may be submitted through Regulations.gov. You may also comment via e-mail to *comments@nara.gov. See* the **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902.

SUPPLEMENTARY INFORMATION: NARA's National Historical Publications and Records Commission (NHPRC) awards approximately 100 grants per year. Our program includes grants to:

- Publish historical editions of the records of the Founding Era;

• Address electronic records challenges and opportunities;

• Work with the State Historical Records Advisory Boards;

• Publish historically significant records relating to the history of the United States;

• Preserve and provide access to records; provide educational programs; and,

• Provide subvention assistance for the costs of manufacturing and distributing documentary volumes produced by projects that have been supported or formally endorsed by the NHPRC.

Every NHPRC grantee must sign Standard Form 424B, ''Assurances-Non-Construction Programs,'' which includes agreeing to comply with all Federal statutes relating to nondiscrimination, of which Section 504 of the Rehabilitation Act of 1973 is a part. However, because our existing regulations on nondiscrimination on the basis of disability do not directly address NHPRC grants recipients, only NARA, we are proposing to make it clear that these regulations apply also to NHPRC grant recipients.

We identified the need to revise part 1208 to directly address NHPRC grantees after conducting a regulatory review of our regulations. During the regulatory review, we identified that other agencies have common rules on nondiscrimination on the basis of disability which directly address grant recipients.

We also propose to add detailed rules on nondiscrimination on the basis of disability in employment practices that grant recipients follow when they hire staff for the programs and projects. We propose to add these employment nondiscrimination rules to:

• Conform to the Government-wide common rules for grant programs; and

• Be in compliance with Section 504 of the Rehabilitation Act of 1973, which prohibits employment discrimination against individuals with disabilities.

This proposed rule also updates compliance procedures, which apply to NARA and grant recipients. Previously, complaints were sent to the Assistant Archivist for Management and Administration. Now, we propose that complaints be sent to the Director, Equal Employment Opportunity and Diversity Programs.

This proposed rule updates an obsolete reference. Existing NARA regulations cite 29 CFR 1613.702(f) for the definition of ''qualified handicap person''. However, this citation is obsolete, and we are updating the citation to 28 CFR 41.32.

Last, we are replacing the term ''handicap'' with ''disability'' throughout the entire regulation because it is in keeping with the terminology used in guidances and directives issued by the Equal Employment Opportunity Commission, which are applicable throughout the Federal sector.

Please submit e-mail comments within the body of your email message or attach comments avoiding the use of any form of encryption. Please also include ''Attn: 3095–AB17'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at (301) 837–2902.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1208

Individuals with disabilities, Equal employment opportunity.

For the reasons set forth in the preamble, NARA proposes to amend part 1208 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1208—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

1. The heading of part 1208 is revised to read as set forth above.

2. The authority citation for part 1208 continues to read as follows:

Authority: 29 U.S.C. 794.

3. Remove reserved §§ 1208.104 through 1208.109, 1208.112 through 1208.129, 1208.131 through 1208.139, 1208.141 through 1208.148, 1208.152 through 1208.159, 1208.161 through 1208.169, and 1208.171 through 1208.999.

4. In part 1208 remove the words ''basis of handicap'' wherever they appear and add in their place the words ''basis of disability':

5. In part 1208 remove the words ''individual with handicaps'' wherever they appear and add in their place the words ''individual with disabilities'.

6. In part 1208 remove the words ''individuals with handicaps'' wherever they appear and add in their place the words ''individuals with disabilities'.

§ 1208.130 [Amended]

7. Amend § 1208.130 (c) by removing the words ''nonhandicapped persons'' and adding in their place, the words ''persons without disabilities'.

8. Sections 1208.101 through 1208.103 are designated as Subpart A—General.

9. Revise § 1208.102 to read as follows:

§ 1208.102 Application.

(a) *NARA.* Sections 1208.101 through 1208.160 and § 1208.184 of this regulation apply to all programs or activities conducted by NARA, except for programs or activities conducted outside the United States that involve individuals with disabilities in the United States.

(b) *Grant recipients.* Sections 1208.130 through 1208.184 in this regulation apply to grant recipients. (The term ''agency'', used in §§ 1208.130 through 1208.184, also includes grant recipients.)

10. Amend § 1208.103 by revising subparagraph (4) under the definition of ''qualified individual with a disability'' to read as follows:

§ 1208.103 Definitions.

* * * * *

Qualified individual with a disability * * *

(4) *Qualified person with a disability* as that term is defined for purposes of employment in 28 CFR 41.32, which is made applicable to this regulation by § 1208.140.

* * * * *

11. Sections 1208.110 and 1208.111 are designated as Subpart B—Agency Responsibilities.

12. Sections 1208.130 and 1208.140 are designated as Subpart C—General Nondiscrimination Rules (Applicable to the Agency and National Historical Publications and Records Commission [NHPRC] Grant Recipients).

13. Revise § 1208.140 to read as follows:

§ 1208.140 Employment.

No qualified individual with a disability shall, on the basis of the disability, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) shall apply to employment in agency programs and activities.

14. Sections 1208.149 through 1208.160 are designated as Subpart D—Program Accessibility (Applicable to the Agency and NHPRC Grant Recipients).

15. Section 1208.170 is redesignated as § 1208.184.

16. Add Subpart E to read as follows:

Subpart E—Employment Practices for Grant Recipients

Sec.
1208.170 General prohibitions against employment discrimination.
1208.171 Reasonable accommodation.
1208.172 Employment criteria.
1208.173 Preemployment inquiries.

§ 1208.170 General prohibitions against employment discrimination.

(a) No qualified individual with a disability shall, on the basis of a disability, be subjected to discrimination in employment under any program or activity that receives or benefits from NHPRC grants.

(b) A recipient must make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of a disability does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of a disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified applicants or employees with disabilities to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 1208.171 Reasonable accommodation.

(a) A recipient must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include making facilities used by employees readily accessible to and usable by persons with disabilities, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (*e.g.*, telecommunication or other telephone devices), the provisions of readers or qualified interpreters, and other similar actions.

(c) Whether an accommodation would impose an undue hardship on the operation of a recipient's program depends upon a case-by-case analysis weighing factors that include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified employee or applicant with a disability if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 1208.172 Employment criteria.

A recipient may not use employment tests or criteria that discriminate against persons with disabilities and must ensure that employment tests are adapted for use by persons with disabilities that impair sensory, manual, or speaking skills.

§ 1208.173 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a person with a disability or as to the nature or severity of a disability. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are disabled, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary efforts;

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(d) The applicant's medical record shall be collected and maintained on separate forms and kept confidential, except that the following persons may be informed:

(1) Supervisors and managers regarding restrictions on the work of persons with disabilities and necessary accommodations;

(2) First aid and safety personnel if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act upon request for relevant information.

17. Designate newly redesignated § 1208.184 as Subpart F—Compliance Procedures.

18. Amend the newly redesignated § 1208.184 by revising paragraphs (a), (b), (c) and (h) to read as follows:

§ 1208.184 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the agency, including those programs and activities funded by NHPRC grants.

(b) The agency must process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). The agency will refer complaints alleging employment discrimination by NHPRC grant recipients, in violation of section 504 of the Rehabilitation Act, to the appropriate Government entity, pursuant to paragraph (e) of this section.

(c) The Director, Equal Employment Opportunity and Diversity Programs (NEEO), is responsible for coordinating implementation of this section. Complaints may be sent to the Director, NEEO (address: National Archives and Records Administration (NEEO), 8601 Adelphi Road, College Park, MD 20740–6001).

* * * * *

(h) The complainant has the right to file an appeal; however, appeals must be filed within 90 days of receipt from the agency of the letter required by § 1208.184 (g). The agency may extend this time for good cause. Appeals may be sent to the Archivist of the United States for reconsideration (address: National Archives and Records Administration (N), 8601 Adelphi Road, College Park, MD 20740–6001).

* * * * *

Dated: October 16, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–26614 Filed 10–21–03; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3039; MB Docket No. 03–219 RM–10797]

Radio Broadcasting Services; Clemmons and Statesville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Mercury Broadcasting Company, Inc., licensee of Station WFMX (FM), Statesville, North Carolina, proposing the substitution of Channel 289C1 for Channel 289C at Statesville, and reallotment of Channel 289C1 from Statesville to Clemmons, North Carolina, as the community's first local transmission service, and the modification of the license for Station WFMX (FM) to reflect the changes. Channel 289C1 can be reallotted at Clemmons at a site 32 kilometers (19.9 miles) north of the community at coordinates 36–17–30 NL and 80–15–30 WL .

DATES: Comments or counterproposals must be filed on or before December 1, 2003, and reply comments on or before December 16, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry C. Martin. Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, VA 22209–3801

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–219 adopted October 8, 2003, and released October 10, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, or via e-mail *qualexint@aol.com*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Clemmons, Channel 289C1 and by removing Channel 289C at Statesville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26682 Filed 10–21–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 –AJ23

Endangered and Threatened Wildlife and Plants; Removal of Federal Protection Status from Two Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to withdraw two areas in Florida from those designated as federally established manatee protection areas. We are proposing this action under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA). The areas we propose to withdraw from designation are manatee refuges, in which watercraft operators are required to operate at slow speeds throughout the year. Specifically, the sites are the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County. Manatee protection would not be diminished under this proposal because the sites will remain protected under State law.

DATES: We will consider comments on the proposed rule if received by November 21, 2003. See additional information on the public comment process in the ''Public Comments Solicited'' section.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Removal of Federal Protection Status of Two Manatee Refuges, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov.* For directions on how to submit electronic comment files, see the ''Public Comments Solicited'' section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Jim Valade (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee (*Trichechus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001), and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). The Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (Domning and Hayek 1986), lives in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and are occasionally seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Watercraft Collisions

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations conducted in Florida from 1978 to 2002 indicate that a total of 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft. This number may underestimate the actual number of watercraft-related mortalities, since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties: Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota (Florida Fish and Wildlife Conservation Commission (FWCC) 2003). The last 5 years have been record years for the number of watercraft-related mortalities. From 1998 to 2002, 409 watercraft-related manatee deaths were recorded (36 percent of all watercraft-related deaths documented during the 1978 to 2002 period) (FWCC 2003).

Manatee Protection Areas

To minimize the number of injuries and deaths associated with watercraft, we and the State of Florida have designated manatee protection areas at sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. Signs are posted in these areas to inform the boating public about restrictions and prohibitions.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever substantial evidence shows that the establishment of such an area is necessary to prevent the taking of one or more manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Take, as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means any active pursuit, torment, or annoyance which, (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B].

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge is defined as an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activity must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment (50 CFR 17.102). A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment (50 CFR 17.102). A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations (50 CFR 17.102).

An extensive network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments (Service 2001). This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species.

The timing and implementation of State and Federal manatee protection area designations have been influenced by State and Federal courts and by the respective agencies and their ability to effectively post regulatory signage and enforce measures in a timely fashion. The Pansy Bayou Manatee Refuge was identified by both the State and Federal governments as an area in need of protection. Neither agency was able to coordinate or communicate its intent to designate because such plans were part of confidential legal negotiations then in progress. As a result, we designated this site in November 2002, and the State subsequently designated this site in December 2002. The Cocoa Beach Manatee Refuge was designated by the State in June 2002 and was

subsequently designated by the Service in November 2002. The Service pursued its designation because the State had not yet posted regulatory signage at the site and we wanted to expeditiously protect manatees using this site. Because the State has now designated and posted both sites as manatee protection areas, and is enforcing the protective regulations, and because the Service believes that State protection for both sites is now comparable to Federal protection, the Service plans to withdraw its designations at these two sites. We are not proposing to withdraw protections from the remaining Federal manatee refuges and sanctuaries at this time. In general, the State does not provide protection or does not provide comparable protection within the remaining areas.

Relationship to Manatee Lawsuit

In *Save the Manatee Club, et al.* v. *Ballard, et al.*, Civil No. 00–00076 EGS (D.D.C., filed January 13, 2000), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the ESA, MMPA, National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, a settlement agreement was approved by the court on January 5, 2001. In this settlement agreement, we agreed to submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and to submit a final rule by September 28, 2001.

Subsequent to the Federal settlement, the FWCC voted to settle *Save the Manatee* v. *Egbert*, Case No. 90–00–400CIV17–WS (N.D. Fla., filed January 13, 2000) (the State case). That settlement, which was entered into by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. (An advance notice of proposed rulemaking had been published in the **Federal Register** on September 1, 2000 [65 FR 53222], and six public workshops were held in December 2000, prior to approval of the Settlement Agreement.) The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). On January 7, 2002, we published a final rule designating two sites in Brevard County, the Barge Canal and Sykes Creek, as Federal manatee refuges (67 FR 680).

On July 9, 2002, the United States District Court for the District of Columbia ruled that the Federal Government violated the Settlement Agreement by failing to designate a sufficient number of refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, the Court issued a remedial order requiring the Service to publish, by November 1, 2002, a final rule for new manatee refuges and sanctuaries throughout peninsular Florida. On September 20, 2002, we published an emergency rule designating seven sites as manatee refuges and sanctuaries on Florida's west coast for a period of 120 days (67 FR 59408). We submitted a final rule to the **Federal Register** on November 1, 2002, designating 13 manatee protection areas in Florida, including the sites previously designated under the emergency rule. The final rule was published on November 8, 2002 (67 FR 68540).

Coordination With State Actions

The sites that were designated in our final rule on November 8, 2002 (67 FR 68450), were selected prior to the disclosure of the terms of the proposed settlement in the State case, *Save the Manatee* v. *Egbert*, Case No. 90–00–400CIV17–WS (N.D. Fla). After the terms of the State settlement were disclosed, it became apparent that there would be overlap between potential State and Federal actions. However, prior to a final determination on potential State designations, the Service was required by Court Order to move forward with its final rule for the designation of additional manatee protection areas throughout peninsular Florida. We designated protection areas at these sites in accordance with the site selection process and criteria identified in our final rule (67 FR 68456) because State protections had not been implemented at these sites. Because the State has subsequently designated and/or implemented comparable measures in these areas, the Service believes it prudent to withdraw its Federal designations for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge.

Manatee Refuges Proposed for Removal

On November 8, 2002, we designated 13 manatee protection areas in Florida, including the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County (67 FR 68450). The State has now designated both sites as manatee protection areas, has posted them, and enforces the protective regulations (F.A.C. 68C–22.026 and 22.006, respectively). As such, both sites are currently protected under both Federal and State authorities. Federal and State restrictions are comparable in terms of areal extent, duration, and type (year-round, slow speed), and each should prevent the taking of one or more manatees. In our November 2, 2002, rule (67 FR 68450), we stated that ''if the State or counties implement measures at these sites that, in our view, provide comparable protection for manatees, we will consider withdrawing or modifying established designations through the rulemaking process.'' Because the State has now implemented measures that provide comparable protection, we propose to withdraw our designations for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge, and to defer to the State's regulations governing waterborne activities currently in effect in these areas (F.A.C. 68C–22.026 and 22.006, respectively). We reserve the right to reinstate Federal measures should they become necessary. We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

Pansy Bayou Manatee Refuge

The federally designated Pansy Bayou Manatee Refuge includes approximately 47 hectares (ha) (116.1 acres) in the northern Pansy Bayou area between City Island and the John Ringling Parkway Bridge on Sarasota Bay in Sarasota County, and regulates vessel traffic to slow speed year-round (67 FR 68450) (see Pansy Bayou Manatee Refuge map). This refuge is located within a State manatee protection area in which all vessels are required by State law to operate at slow speed year-round (F.A.C. 68C–22.026(2)(a)(4)).

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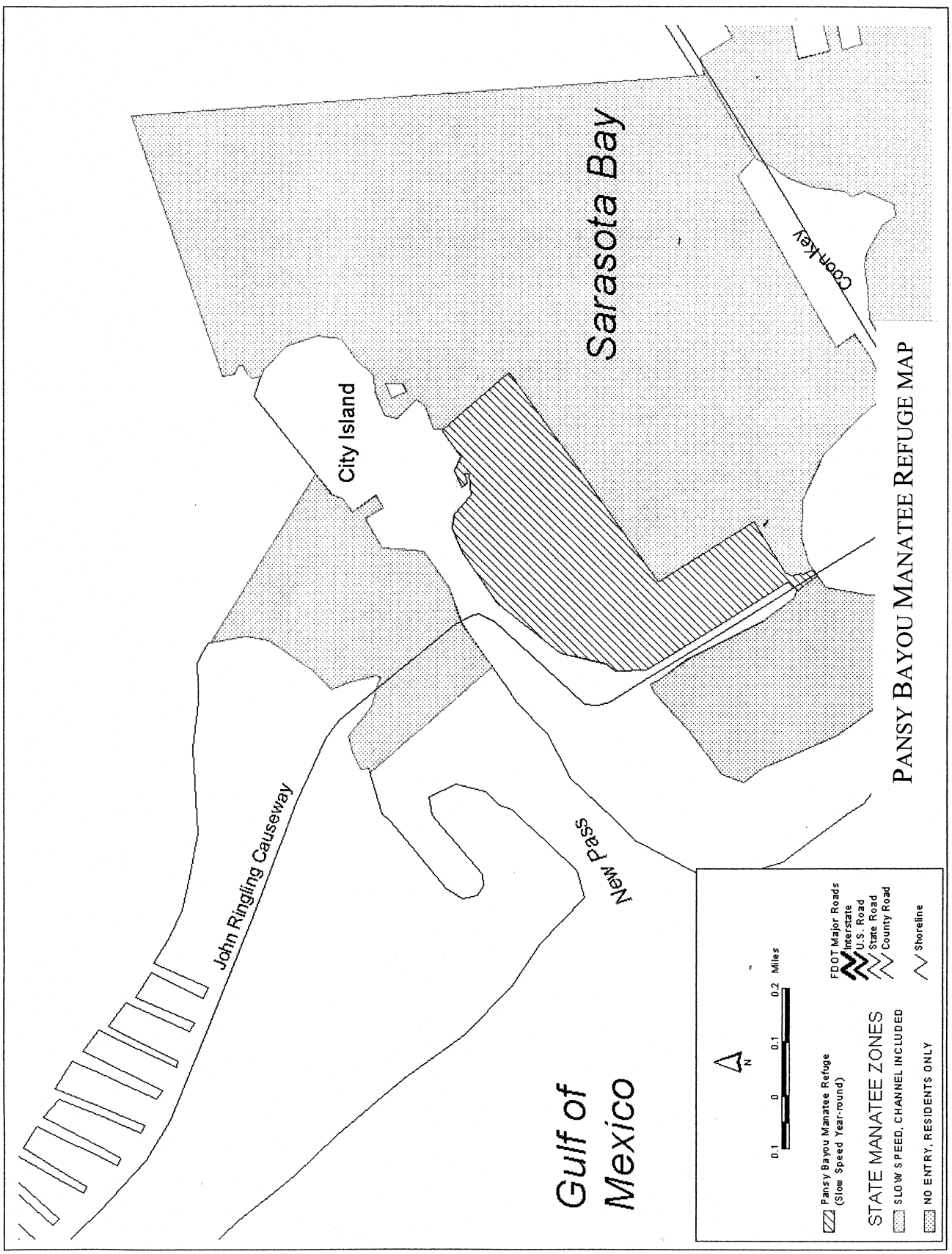
Sarasota Bay
City Island
Coon Key
John Ringling Causeway
New Pass
Gulf of Mexico
PANSY BAYOU MANATEE REFUGE MAP
0.1 0 0.1 0.2 Miles
N
Pansy Bayou Manatee Refuge (Slow Speed Year-round)
STATE MANATEE ZONES
SLOW SPEED, CHANNEL INCLUDED
NO ENTRY, RESIDENTS ONLY
FDOT Major Roads
Interstate
U.S. Road
State Road
County Road
Shoreline

Cocoa Beach Manatee Refuge

The federally designated Cocoa Beach Manatee Refuge includes approximately 23.9 ha (59.1 acres) in an area adjacent to Municipal Park, just west of Cocoa Beach in the Banana River, in Brevard County and regulates vessel traffic to slow speed year-round (67 FR 68450) (see Cocoa Beach Manatee Refuge map). This refuge is located within a State manatee protection area in which all vessels are required by State law to operate at slow speed year-round (F.A.C. 68C–22.006(2)(d)(16)).

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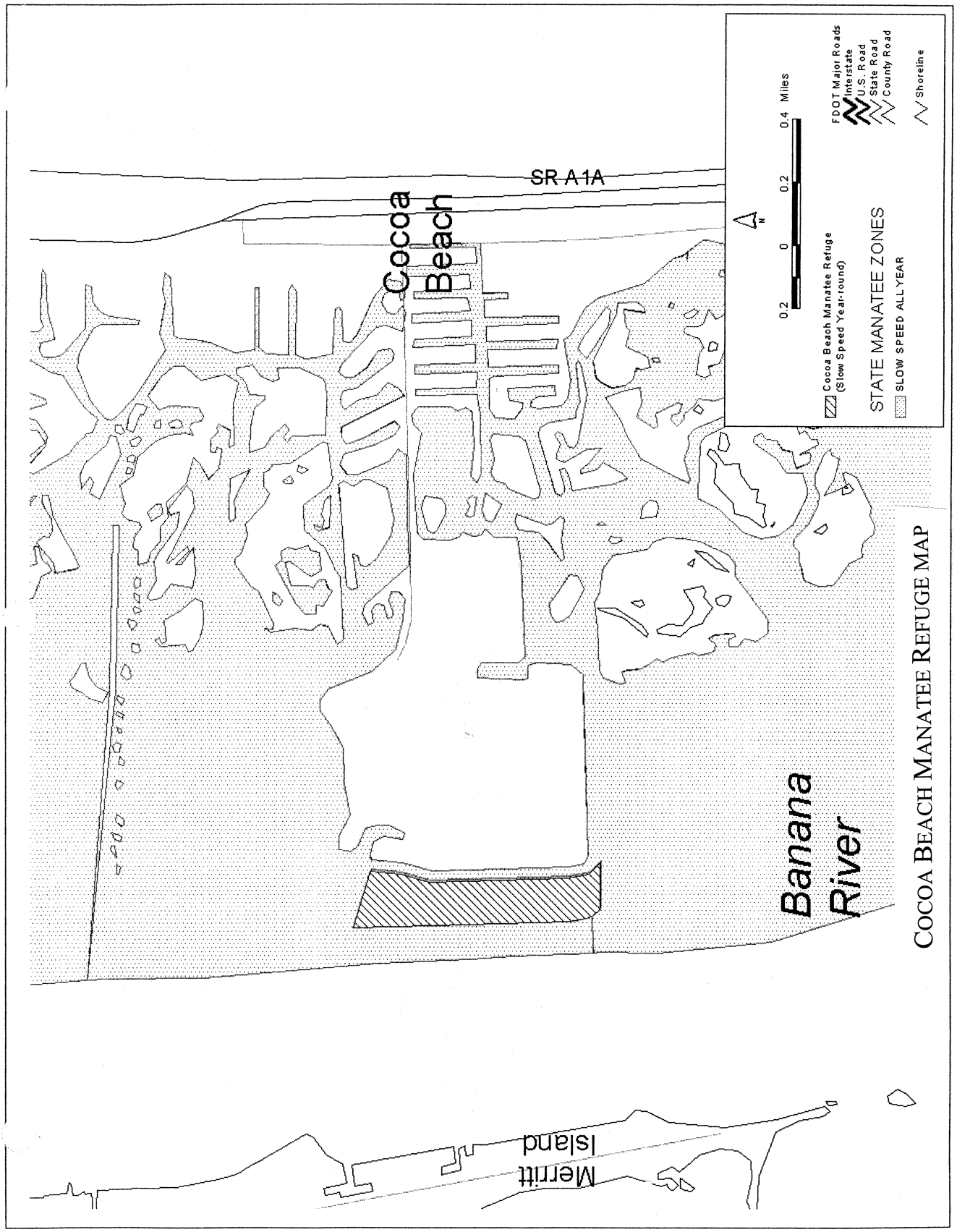

COCOA BEACH MANATEE REFUGE MAP

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. Reasons why any of these areas should be maintained as Federal manatee refuges, including any data supportive of these reasons;
2. Current or planned activities in the subject areas and their possible effects on manatees;
3. Any foreseeable economic or other impacts, positive or negative, resulting from the proposed removal of the Federal designations;
4. Potential adverse effects to the manatee associated with the proposed removal of the Federal designations; and
5. Any actions that could be considered instead of, or in conjunction with, the actions in this proposed rule.

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII), and should not use special characters and encryption. Please also include ''Attn: RIN 1018–AJ23,'' your full name, and return address in your e-mail message. Comments submitted to *manatee@fws.gov* will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Jacksonville Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed removal of the Federal designations of these manatee refuges.

We will consider all comments and information received during the 30-day comment period on this proposed rule during preparation of a final rulemaking and will refine this proposal if and when appropriate. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to the following address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This proposed rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the removal of Federal designation of these two manatee refuges in Sarasota and Brevard Counties in the State of Florida. We do not expect any significant effects because comparable State protection would remain in place following the removal of Federal protection.

Activities affected by the designation of manatee protection areas include waterborne activities conducted by recreational boaters, commercial charter boats, and commercial fishermen (including transiting, cruising, water skiing, and fishing activities). Federal measures in place at the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge require boat operators to operate at slow speeds throughout the year. State measures require boat operators to operate in a comparable fashion. In removing Federal protection, boat operator behavior in these areas will remain unchanged. Therefore, these activities will not be affected by this rule, and no substantive economic impacts should ensue.

b. This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This proposal is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. In previous rule-makings, we stated that ''[i]f comparable or similar protections are put in place in the future, we will consider removing those areas from Federal protection.'' This proposed removal of Federal protection follows the implementation of comparable State protection.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This proposed rule will not raise novel legal or policy issues.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for the reasons cited below. An initial/final Regulatory Flexibility Analysis is not required.

Accordingly, a Small Entity Compliance Guide is not required.

The characteristics of the two areas (Cocoa Beach and Pansy Bayou) affected by this rule are described below. The economic effects considered include the direct effects, primarily on homeowners, and the indirect effects on businesses in the removal of speed zones.

Direct Economic Effects:

—*Cocoa Beach Manatee Refuge.* The Cocoa Beach Manatee Refuge is located along the eastern shore of the Banana River in Brevard County, Florida. The refuge is surrounded by water on all sides, and the nearest adjoining land is occupied by a municipal golf course with no marine facilities. Immediately to the north and south of the Cocoa Beach site lie residential areas composed of approximately 500 single-family houses. Approximately one-half of the houses have boat docks. Residents must pass through Refuge waters in order to reach more open waters. Refuge waters are also used by commercial fishing guides to reach more open waters and by a small number of commercial fishermen for crabbing, which for the purposes of this analysis are considered to be small businesses.

The removal of the Federal ''slow speed'' designation will not affect direct use activities because the State of Florida is implementing an identical speed limit in its place. Resident boaters will be able to continue passing through Refuge waters at the currently posted speed. Furthermore, the State allows for speed exemptions for commercial fishermen. Those small businesses (commercial fishers and crabbers, and fishing guides) with State exemptions may be able to reduce their time to and from fishing sites and enjoy a small benefit from this rule.

—*Pansy Bayou Manatee Refuge.* The Pansy Bayou Manatee Refuge is located on the northwestern shore of Roberts Bay in Sarasota County, Florida. Adjoining land uses are primarily residential. Approximately 50 to 75 homes are in the vicinity of the Refuge and most of these residences have private docks. The city/county owns a parcel in the vicinity of the Refuge that is leased to a marine lab, sailing club, and ski club. Principal use of Refuge waters is for transit to open waters (*i.e.*, traveling to and from docks out to the adjoining Intracoastal Waterway) and for waterskiing. A small number of commercial fishermen may also use the site for crabbing, and some fishing guides may transit the site when traveling to and from off-shore fishing destinations.

As with the Cocoa Beach site, the removal of the Federal ''slow speed'' designation will not affect residential activities. Users will continue to be restricted in their operations by the State ''slow speed'' restrictions currently in place, and State exemptions for fishers will remain in place. As such, residents in private homes are able to maintain their current activities and should experience no change in use of this site. Those small businesses (commercial fishers and crabbers, and fishing guides) with State exemptions may be able to reduce their time to and from fishing sites and enjoy a small benefit from this rule.

Indirect Economic Effects:

With the exception of commercial fishers and crabbers and fishing guides who qualify for State exemptions and may receive a small benefit in reduced travel time to and from fishing sites, any indirect small business economic effects would be limited to those activities supported by residents of the two sites proposed for removal and visitors to these sites. Since this rule deals solely with speed restrictions on water, it is reasonable to look at the effect of speed restrictions on the demand for boats in the affected areas. In a study by Bendle and Bell (1995), four economic models were estimated to determine the effect of speed zones in a county on the demand for boats. In each of the models the coefficient on the speed zones was not statistically different from zero. This indicates that the presence or absence of speed zones does not affect the demand for boats in Florida counties. In a study by Parker (1989), ''The bulk of boaters (91%) supported protecting the manatee even if it meant reducing the speed allowed on some waterways.'' These studies indicate that it is valid to say that a large majority of Florida residents support manatee protection and the presence or absence of speed zones does not influence the demand for boats. As a result, it then seems to follow that most Florida residents will not change their spending patterns because of the presence or absence of speed zones, and any indirect economic effects on small businesses will not be significant.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. As discussed above, this rule to remove Federal designation from two manatee protection areas may have a positive but insignificant economic benefit for some small businesses in the two affected counties. However, the substitution of State speed zones for Federal speed zones may very well negate any economic changes resulting from this rule. Without changes in recreational use patterns, the economic effects will be insignificant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. Commercial fishers, crabbers, and guides who qualify for State exemptions will benefit from this rule when traveling to and from fishing grounds. However, the substitution of State speed zones for Federal ones will not affect the vast majority of boaters who use the two former Federal manatee protection areas.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate a small amount of additional economic activity, but these economic effects are believed to be minor and will not appreciably change normal operation of businesses in the affected counties. The commercial enterprises who qualify for a State exemption may receive some benefit from the reduced amount of travel time to business sites; however, the Service does not believe this will be economically significant.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Removal of Federal Protection Status from manatee refuges imposes no new obligations on State or local governments.

b. This proposed rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A

Federalism assessment is not required. This proposed rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The proposed regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, and businesses, or organizations.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and have determined that this action is categorically excluded from review under NEPA (516 DM 2, Appendix 1.10). An environmental assessment was prepared for the establishment of all 13 manatee refuges designated in November, 2002, including these refuges. Since the first action was not implemented, Federal signage has not yet been installed for these two refuges, and removal of Federal refuge designation will leave comparable state requirements in place, little or no change in the environment has occurred that will be reversed as a result of the removal of Federal refuge designation. Thus, no environmental assessment or environmental impact statement for the removal of Federal refuge designation is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because comparable State requirements will remain in effect, this rule is not anticipated to result in any change in activities and, therefore, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Jim Valade (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. Amend § 17.108 as follows:

a. Remove paragraphs (c)(5), including the map ''Pansy Bayou Manatee Refuge,'' and (c)(11), including the map ''Cocoa Beach Manatee Refuge.''

b. Redesignate paragraphs (c)(6) through (c)(10) as paragraphs (c)(5) through (c)(9), respectively.

c. Redesignate paragraphs (c)(12) through (c)(14) as paragraphs (c)(10) through (c)(12), respectively.

d. Revise newly redesignated paragraphs (c)(10)(i)–(ix) by removing the words ''paragraph (12)(x)'' each time they appear and adding the words ''paragraph (c)(10)(x)'' in their place.

e. Revise newly redesignated paragraphs (c)(11)(i)–(iv) by removing the words ''paragraph (13)(v)'' each time they appear and adding the words ''paragraph (c)(11)(v)'' in their place.

f. Revise newly redesignated paragraphs (c)(12)(i)–(xi) by removing the words ''paragraph (14)(xii)'' each time they appear and adding the words ''paragraph (c)(12)(xii)'' in their place.

Dated: October 10, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–26668 Filed 10–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031015257–3257–01; I.D. 092503C]

RIN 0648–AQ79

Fisheries of the Northeastern United States; Proposed 2004 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule - 2004 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs; request for comments.

SUMMARY: NMFS proposes quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2004. Regulations governing these fisheries require NMFS to publish the proposed specifications for the 2004 fishing year and seek public comment on such proposed measures. The intent of this action is to propose allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone and an allowable harvest level of Maine mahogany ocean

quahogs from Atlantic waters north of 43° 50′ N. lat. in 2004.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on November 21, 2003.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm*.

Written comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—2004 Clam and Quahog Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Susan W. Chinn, Fishery Management Specialist, 978–281–9218, *susan.chinn@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs (locally known as mahogany quahogs) to the management unit and provided that a small artisanal fishery for ocean quahogs in the waters north of 43° 50′ N. lat. has an annual quota with an initial amount of 100,000 Maine bu (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery. The fishing quotas must be in compliance with overfishing definitions for each species. In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council staff. The proposed quotas for the 2004 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries are shown here. The status quo level of 2003 for the Maine mahogany ocean quahog is proposed to be maintained for 2004, but the surfclam quota would be increased by 4.6 percent (from 3.25 to 3.4 million bu) and the ocean quahog quota would be increased by 11.1 percent (from 4.5 to 5.0 million bu).

PROPOSED 2004 SURFCLAM/OCEAN QUAHOG QUOTAS

Fishery	2004 final quotas (bu)	2004 final quotas (hL)
[1]Surfclam	3,400,000	1,810,000
[1]Ocean quahog	5,000,000	2,662,000
[2]Maine mahogany ocean quahog	100,000	35,240

[1] 1 bushel = 1.88 cubic ft. = 53.24 liters
[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters

Surfclams

The Council's recommended 2004 quota of 3.4 million bu (1.81 million hL) for surfclams is the fourth change in the quota since 1995. In 1999, the Council expressed its intention to increase the surfclam quota to OY over a period of 5 years, (OY = 3.4 million bu (1.810 million hL)). The most recent assessment for surfclams, Stock Assessment Workshop 30 (SAW 30), indicated that the resource is at a high level of biomass, is under-exploited, and can safely sustain increased harvests, but cautioned that it may be advantageous to avoid localized depletion. Industry reports that the current demand for clam products is very strong, with processors describing an inability to fill all orders due to a lack of clams. However, information reported by industry in their vessel trip reports has shown a steady reduction in the landings per unit of effort, an important indicator that the annual quota is approaching the OY for the resource. Federal landings of surfclams increased by 8 percent in 2002 to a total of 3.11 million bu (1.656 million hL). The majority of the surfclam catch continues to be derived from one area (northern NJ). Based on the information and advice from the most recent assessment for surfclams, the Council recommends an increase of 4.6 percent from the 2003 level of 3.25 million bu (1.730 million hL), which would result in a 2004 quota of 3.4 million bu (1.810 million hL), the maximum allowable quota under the current FMP.

Ocean Quahogs

The Council has recommended a 2004 quota of 5.0 million bu (2.662 million hL) for ocean quahogs. This represents an increase of 11.1 percent, but would be the first increase in the quota in 5 years. Although ocean quahog landings had been on a declining trend from the 4.9–million bu (2.609 million hL) peak in 1992, quahog landings have increased consecutively by 17 percent and by 5 percent for the past 2 fishing years (from fishing year 2000 to 2001, and from fishing year 2001 to 2002, respectively) to a total of 3.87 million bu (2.061 million hL), or 86 percent of the annual quota in fishing year 2002. Another encouraging development has been the increase in average landings per unit of effort in 2002. Considering these positive indicators for the status of the ocean quahog stock, the Council recommends increasing the ocean quahog quota for 2004 by 11.1 percent, to 5.0 million bu (2.662 million hL). The best scientific information currently available suggests that an increase in the quahog quota to 5.0 million bu (2.662 million hL) would be sustainable. Such an increase in the quahog quota would also help offset the impact on industry of the expected reduction of the NJ state surfclam quota to prevent localized depletion of the surfclam resource in state waters.

The Atlantic surfclam and ocean quahog quotas are specified in standard bushels of 53.24 L per bushel, while the Maine mahogany ocean quahog quota is specified in ''Maine'' bushels of 35.24 L per bushel. Because Maine mahogany ocean quahogs are the same species as ocean quahogs, both fisheries are combined and share the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine mahogany quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

The Council has recommended that the Maine mahogany ocean quahog quota for 2004 remain unchanged from the 2001, 2002, and 2003 quota level at 100,000 Maine bu (35,240 hL). No additional information is available at this time on the impacts of the Maine mahogany ocean quahog quota that

would allow a more in-depth analysis of the stock and, therefore, allow the quota to be increased beyond the current maximum level of 100,000 Maine bu (35,240 hL). An effort is currently underway within the State of Maine to initiate a scientific survey and assessment of the ocean quahog resource. From the best scientific information currently available, maintaining the quota at its current level for another year will not seriously constrain the fishery or endanger the resource.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA in section 8.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section of this Proposed Rule. This action does not duplicate, overlap, or conflict with any other Federal rules. A summary of the IRFA follows:

Vessels

In 2002, a total of 54 vessels reported harvesting surfclams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2002 gross income for surfclam harvests was $740,500 per vessel, and $668,990 per vessel for ocean quahog harvests. In the small artisanal fishery for ocean quahogs in ME, 35 vessels reported harvests in the clam logbooks, with an average value of $135,511 per vessel. All of these vessels fall within the definition of a small entity. The Council recommends a 4.6–percent increase in the surfclam quota, an 11.1–percent increase in the ocean quahog quota, and no change in the 2004 quota for Maine mahogany ocean quahogs from their 2003 quotas. Since 2002 harvest levels of 3.133 and 3.871 million bu (1.668 and 2.061 million hL) for surfclams and ocean quahogs, respectively, were below the 2004 proposed quotas, the Council believes that the proposed 2004 quotas may yield a surplus quota available to vessels participating in all these fisheries. This is especially likely to occur in the ocean quahog fishery. In the case of a surplus quota, vessels would not be constrained from harvesting additional product, thus allowing them to increase their revenues.

The Council analyzed four ocean quahog quota alternatives in addition to the preferred 5.000–million bu (2.662–million hL) option, including 4.000, 4.250, 4.500, and 6.000 million bu (2.129, 2.263, 2.396, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000–million bu (2.129–million hL) quota would represent a 12–percent decrease from the current 4.500–million bu (2.396–million hL) quota and, assuming the entire quota were harvested, a 3–percent increase in harvest from the 2002 harvest level of 3.871 million bu (2.061 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to the Council, but would result in the fewest economic benefits available to the ocean quahog fishery. Adoption of the 4.250–million bu (2.263–million hL) quota would represent a 10–percent increase to the 2002 ocean quahog landings, but a 6–percent decrease from the 2003 quota level. Given the current biological status of the quahog resource, the Council does not believe that a quota reduction is warranted at this time. Adoption of the 4.500–million bu (2.396–million hL) quota would most likely have a limited impact on small entities, since it results in no change from status quo. The preferred alternative allows for an 11.1–percent increase in quota from 4.500 million bu (2.396 million hL) to 5.000 million bu (2.662 million hL), and a 29–percent increase to the 2002 ocean quahog landings. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33–percent increase in allowable harvest and a 55–percent increase in landings from 2002, assuming all the quota were harvested. However, the industry does not have a market available to absorb such a large increase in landings and may not have the vessel capacity necessary to harvest a quota this large. Since all alternatives, including the preferred, would yield increases relative to the actual 2002 landings, increased revenues would be likely to occur, albeit at various percentage differences.

The Council identified four surfclam quota alternatives in addition to the preferred alternative of 3.400 million bu (1.810 million hL), including 1.850, 3.135, 3.250, and 3.325 million bu (0.985, 1.669, 1.730 and 1.771 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surfclams. Adoption of a 1.850–million bu (0.985–million hL) quota would represent a 43–percent decrease from the current 3.250–million bu (1.517–million hL) quota, and a 41–percent decrease from the 2002 harvest level of 3.113 million bu (1.658 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall ex-vessel revenues. Adoption of the 3.135–million bu (1.669–million hL) quota would represent a 0.7–percent increase in the 2002 surfclam landings but a 4–percent decrease from the 2003 quota level. Given the current biological status of the surfclam resource, the Council does not believe that a quota reduction is warranted at this time. Adoption of the 3.250–million bu (1.730–million hL) quota would most likely have a limited impact on small entities, since it results in no change from status quo. Adoption of the 3.325–million bu (1.771–million hL) quota would represent a 7–percent increase to the 2002 surfclam landings and a 2–percent increase to the 2003 quota level. The preferred alternative allows for a 9–percent increase in the 2002 surfclam landings and a 4.6–percent increase in quota from 3.250 million bu (1.730 million hL) to the maximum allowable quota of 3.400 million bu (1.810 million hL) . In summation, the Council determined that the only alternative that would significantly negatively impact revenues to vessels is the 1.850–million bu (0.985–million hL) alternative for surfclams. The 3.135–million bu (1.669–million hL) and status quo alternative would be restrictive and have a slight to moderate impact on revenues. The 3.325–million bu (1.771–million hL) and preferred alternatives would yield increases relative to the actual 2002 landings, so increased revenues would be likely to occur. The resource can support the 4.6–percent increase in landings and the industry believes it can utilize this additional product and thus have a beneficial impact for the Nation.

The quota for Maine mahogany ocean quahogs is specified at a maximum 100,000 bu (35,240 hL). The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. The Council considered two alternative quotas for the Maine mahogany ocean quahog fishery, in addition to the preferred alternative of 100,000 bu (35,240 hL), including 50,000 bu and 84,700 bu (17,620 and 29,847 hL). Any quota the Council would have recommended below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely

have resulted in a decrease in revenues to individual vessels.

Processors

As of mid–2003, there were 9 processors that participated in the surfclam and ocean quahog fisheries, plus 10 companies that bought ocean quahogs directly from vessels from within the State of Maine. Of the nine processors, approximately six are responsible for the vast majority of purchases in the ex-vessel market and sale of processed clam products in appropriate wholesale markets. Impacts to surfclam and ocean quahog processors would most likely mirror the impacts of the various quotas to vessels as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products, and since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to be price-dependent.

Allocation Holders

In 2003, surfclam allocation holders totaled 102, while 63 firms or individuals held ocean quahog allocation. If the recommended quotas are accepted, i.e., a slight increase of 4.6 percent for surfclams, an 11.1–percent increase for ocean quahogs, and no change from the 2003 quota for Maine mahogany ocean quahogs, it is likely that impacts to allocation holders or buyers would be minimal. Theoretically, increases in quota would most likely benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota because of reduction in value. Decreases in quota would most likely have an opposite effect.

Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: October 17, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–26676 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031009255–3255–01; I.D. 092503A]

RIN 0648–AQ88

Fisheries of the Exclusive Economic Zone Off Alaska; Revision to the Management of ''Other Species'' Community Development Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would modify the management of the ''other species'' Community Development Quota (CDQ) reserve by eliminating specific allocations of ''other species'' to individual CDQ managing organizations (CDQ groups) and instead allow NMFS to manage the ''other species'' CDQ reserve with the general limitations used to manage the catch of non-CDQ groundfish in the Bering Sea and Aleutian Islands management area (BSAI). This action also would eliminate the CDQ non-specific reserve and make other changes to improve the clarity and consistency of CDQ Program regulations. This action is necessary to improve NMFS' ability to effectively administer the CDQ Program. It is intended to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to this program.

DATES: Comments must be received by November 6, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 420 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments may also be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228 or *Obren.Davis@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Management Background and Need for Action

The CDQ Program allocates groundfish, prohibited species, crab, and Pacific halibut to six CDQ groups representing 65 western Alaska communities. With limited exceptions, NMFS allocates 7.5 percent of each BSAI groundfish Total Allowable Catch (TAC) category to a CDQ reserve for that TAC category. Each CDQ reserve is further apportioned among the six CDQ groups. The purpose of the CDQ Program is to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of participating communities. CDQ groups use the proceeds derived from the harvest of CDQ allocations to fund a variety of fisheries-related projects and provide training and educational opportunities to residents of participating communities.

The CDQ Program began in 1992 with the allocation of 7.5 percent of the BSAI pollock TAC. Allocations of sablefish and halibut were added in 1995. The Council recommended expanding the CDQ Program in 1995 and NMFS implemented the multispecies CDQ Program in 1998, combining the existing pollock, halibut, and fixed gear sablefish CDQ fisheries with additional allocations of a variety of crab, groundfish, and prohibited species. The pollock CDQ allocation increased to 10 percent of the BSAI pollock TAC in 1999 under the American Fisheries Act (Public Law 105–277). Management of crab CDQ is delegated to the State of Alaska and will not be mentioned hereafter.

As part of its original design, the multispecies CDQ Program required a higher level of accountability of allocated species than any other Alaska groundfish fishery that NMFS was then managing. Other limited access programs in place at the time, including the existing CDQ fisheries and the fixed gear halibut and sablefish Individual Fishing Quota fisheries, were target fishery-based programs that did not

include individual quotas for all TAC and prohibited species catch (PSC) species that were caught in those fisheries. In other words, the catch of target species in these programs was not constrained by any additional limits on the catch of incidentally caught or prohibited species.

Under the multispecies CDQ Program, each CDQ group is allocated a percentage of the groundfish CDQ and prohibited species quota (PSQ) reserves and each group is prohibited from exceeding any of its CDQ allocations or halibut PSQ allocation. Allocation of the CDQ and PSQ reserves among the six CDQ groups results in about 200 different quotas that have to be managed at the CDQ group level. CDQ groups have identified the strict accounting requirements and prohibition against exceeding a specific CDQ, particularly in regards to the ''other species'' CDQ species category, as unnecessarily constraining to the complete prosecution of their target fisheries. The ''other species'' complex is comprised of various species of sharks, skates, sculpins, and octopi. These species are incidentally caught with CDQ target species such as pollock, Pacific cod, sablefish, Atka mackerel, and a variety of flatfish species. Exceeding any CDQ allocation results in an enforcement action against a CDQ group, which may include monetary or other penalties. To avoid exceeding their ''other species'' allocations, CDQ groups may have to modify their fishing practices by fishing in new or different locations or ceasing to fish for some target species. Failing to completely harvest CDQ target species allocations has an economic impact on CDQ groups and the CDQ communities when revenues are foregone, which may adversely affect the accomplishment of projects intended to foster economic development in western Alaska communities.

The management of the ''other species'' category has differed from almost every other groundfish CDQ species category since the inception of the groundfish CDQ Program. During the development of the program, NMFS recognized that the catch of some non-target species, such as arrowtooth flounder and ''other species,'' could prevent CDQ groups from fully harvesting their allocations of CDQ target species. To address this issue, NMFS created the CDQ non-specific reserve. This reserve provides an in-season management tool that CDQ groups may use to augment the initial allocations of arrowtooth flounder and ''other species'' CDQ that they receive each year. It was developed to provide CDQ groups with some degree of flexibility to avoid having their target fisheries constrained by the catch of incidentally caught species such as ''other species.'' In brief, the CDQ non-specific reserve allows a group to convert up to 15 percent of its annual allocation of arrowtooth flounder CDQ into ''other species'' CDQ or vice versa. The utility of this reserve is directly affected by the size of the arrowtooth flounder and ''other species'' annual TACs. For example, the smaller the arrowtooth flounder TAC, the smaller the arrowtooth flounder CDQ reserve and subsequent CDQ allocations, which in turn yields smaller contributions to the CDQ non-specific reserve.

The CDQ non-specific reserve appeared to function as originally envisioned during the first few years of the groundfish CDQ Program. However, this reserve has not provided CDQ groups with the catch accounting flexibility expected of it due to unforeseen factors associated with the annual BSAI groundfish specifications process. CDQ groups identified shortcomings with the CDQ non-specific reserve in 2001. The Council requested that NMFS increase the amount of arrowtooth flounder apportioned to each group's CDQ non-specific reserve from 15 percent to 50 percent in both 2001 and 2002 in order to provide CDQ groups with additional amounts of ''other species'' CDQ in those years. NMFS implemented these changes via emergency rules associated with the annual BSAI groundfish specifications for each of those years. This augmented the amount of ''other species'' available to CDQ groups in 2001 and 2002. In 2003, the amount of arrowtooth flounder apportioned to each CDQ group's non-specific reserve was not increased. Also, the arrowtooth flounder TAC decreased from 16,000 mt in 2002 to 12,000 mt in 2003. The combination of these two events decreased the amount of arrowtooth flounder that CDQ groups have available to release from their non-specific reserve to their ''other species'' allocations in 2003.

CDQ group representatives requested relief from the current ''other species'' management structure from the Council at its February 2003 meeting. In turn, the Council requested that NMFS prepare an analysis addressing the management of ''other species'' CDQ at the CDQ reserve level, rather than allocating the ''other species'' CDQ reserve to individual CDQ groups. Neither the Council nor NMFS considers the modification of percentage contributions to the CDQ non-specific reserve to be a viable, long-term solution that would address issues associated with the non-specific reserve or the amount of ''other species'' available to CDQ groups.

As described in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**), neither the ''other species'' CDQ reserve nor individual allocations of ''other species'' have been exceeded by CDQ groups in the last several years. CDQ groups also have not caught all of their target species allocations, with the exception of pollock. However, CDQ groups have informed NMFS that they consider the incomplete harvest of some target species in the past, such as Pacific cod, to be directly related to efforts made to minimize the catch of ''other species.'' They believe that the current prohibition against exceeding their individual ''other species'' CDQ allocations has forced them to alter standard fishing practices and constrained them from fully prosecuting their CDQ target species allocations. NMFS cannot corroborate that the current management of the ''other species'' CDQ category is the primary reason that CDQ groups have not fully harvested some CDQ target species in recent years. However, NMFS estimates that an insufficient amount of ''other species'' CDQ is available to meet the potential catch of ''other species'' if all of the CDQ target fisheries were fully prosecuted during a year. Were CDQ groups to fully harvest each of their CDQ target allocations, they would likely exceed the amount available in the annual ''other species'' CDQ reserve.

In April 2003, following review of the EA/RIR/IRFA prepared for this action and public testimony, the Council took final action and recommended a regulatory amendment to modify how the ''other species'' CDQ reserve is allocated and managed. Specifically, the Council requested that this species category no longer be allocated to individual CDQ groups. Instead, the harvest of ''other species'' CDQ would be managed at the CDQ reserve level by applying management measures used for non-CDQ groundfish fisheries. The Council also recommended that the CDQ non-specific reserve be eliminated. Eliminating individual group allocations of ''other species'' would remove the need for the CDQ non-specific reserve, as it is designed to function at the individual group level, not at the CDQ reserve level.

The Council's recommended revision to the management of ''other species'' CDQ is a departure from the original approach to managing the CDQ fisheries, which involved allocation of all CDQ and PSQ reserves to individual CDQ groups and strict accountability by the CDQ groups for catch of these species. NMFS explained this original

management approach in the proposed and final rules for the multispecies CDQ Program (62 FR 43866, August 15, 1997; 63 FR 30381, June 4, 1998). At that time, keeping catch in the CDQ fisheries strictly within the CDQ and halibut PSQ reserve amounts, and accounting for all catch in all CDQ fisheries against CDQ group quotas was considered a more important goal of the program than the full harvest of all target species.

The Council recognized that the original management and catch accounting structure developed for the groundfish CDQ Program may not be appropriate to apply to this species category. It noted that managing the ''other species'' CDQ at the individual CDQ group level may preclude the successful attainment of overall CDQ Program goals. This action would reflect a divergence from the original management philosophy for the CDQ fishery with respect to the management of ''other species'' CDQ. Management measures used in the non-CDQ fisheries, such as directed fishing closures or placing species on ''prohibited species catch'' status, would be used to manage the ''other species'' CDQ reserve, rather than individual allocations to CDQ groups.

The Council also recognized that managing ''other species'' at the CDQ reserve level could result in the CDQ fisheries catching more ''other species'' than are in the ''other species'' CDQ reserve, because ''other species'' CDQ catch would no longer be constrained by fixed allocations, but by more general management measures. NMFS expects that management of the ''other species'' CDQ allocation at the CDQ reserve level would not, on its own, result in achievement of the ''other species'' TAC, Acceptable Biological Catch (ABC), or Overfishing Level (OFL) in the future. An examination of the non-CDQ and CDQ ''other species'' allocation and catch levels from 1999–2002 illustrates that the combined catch in the CDQ and non-CDQ fisheries was less than the annual TAC, ABC, and OFL. Even if the catch of ''other species'' in the CDQ fisheries increased if CDQ groups increase their catch of CDQ target species, NMFS does not expect that this increase would contribute significantly to any future potential for attainment of the ''other species'' TAC. Thus, this action is not expected to cause early closures of non-CDQ fisheries or negatively impact non-CDQ fishermen.

This change in management would, however, have the potential to increase the economic value of the CDQ fisheries by increasing the harvest of target species. The Council considered the social and economic benefits of this action and the likelihood that this action would not negatively affect management of the ''other species'' quota category or cause limitations on the non-CDQ fisheries. The Council determined that the social, economic, and conservation benefits associated with this action provide adequate justification to deviate from the original management philosophy for strict quota accountability in the CDQ fisheries.

NMFS also supports implementing the change in ''other species'' CDQ management because this change should have a positive economic impact on western Alaska communities at a time when adequate ''other species'' resources are available for both the non-CDQ and CDQ fisheries. Any incomplete harvest of allocated CDQ species that results from the current prohibition against exceeding an individual CDQ group's ''other species'' allocation results in foregone economic opportunities. CDQ groups and their member communities benefit from their CDQ allocations via the royalty income received from the harvest of such allocations. This income is used to fund fisheries-related investments, local economic development projects, and training and educational programs. CDQ fishing operations also employ residents of CDQ communities in a variety of different positions. Fishing industry partners affiliated with CDQ groups consider their CDQ fishing operations an important component of their aggregate fishing activities, because such operations provide them with access to additional fishery resources and revenues.

Description of Action

This action would modify the management of the ''other species'' CDQ reserve and amend regulations to distinguish between the management of those groundfish CDQ reserves that are allocated to CDQ groups and those that are not. It would rescind the ''other species'' CDQ percentage allocations issued to individual CDQ groups in January 2003, thereby superceding the Alaska Regional Administrator's 2003–2005 allocation decision specific to the ''other species'' CDQ category. The ''other species'' CDQ reserve would still be established annually, but would no longer be allocated to CDQ groups. All catch of ''other species'' in the groundfish CDQ fisheries would accrue towards this reserve, rather than towards specific allocations to individual CDQ groups. NMFS would manage the ''other species'' CDQ reserve with management measures in § 679.20(d). Under these measures, NMFS would issue a directed fishery closure applicable to ''other species'' CDQ at the beginning of each year. This would limit the retention of ''other species'' in the groundfish CDQ fisheries to specified maximum retainable amounts established in regulations at § 679.20(e) and (f). This limitation would minimize the likelihood that the available amount of ''other species'' CDQ would be reached in the groundfish CDQ fisheries. It would still allow some retention of skates, which are part of the ''other species'' category, by those CDQ vessels wishing to retain them. Additionally, NMFS would monitor the catch of ''other species'' in the CDQ fisheries and require that ''other species'' be treated in the same manner as a prohibited species if the CDQ reserve for ''other species'' were reached. If this occurred, retention of ''other species'' in the groundfish CDQ fisheries would be prohibited. Further fishing restrictions would occur if the aggregate catch of ''other species'' in both the CDQ and non-CDQ fisheries approach the annual OFL for ''other species.'' If this were to occur, NMFS would specify limitations or prohibitions designed to prevent overfishing of this species group.

In addition to modifying the management of the ''other species'' CDQ reserve, this action would eliminate the CDQ non-specific reserve. Discontinuing the allocation of the ''other species'' CDQ reserve among individual CDQ groups would remove the need for the CDQ non-specific reserve, as arrowtooth flounder would be the only remaining CDQ category contributing to this reserve. If the CDQ non-specific reserve mechanism were retained, NMFS would apportion 15 percent of each CDQ group's annual arrowtooth flounder CDQ allocation to a group's CDQ non-specific reserve. The only CDQ species category that a group could release its non-specific reserve back to would be arrowtooth flounder, because an ''other species'' CDQ allocation would no longer be available to contribute to, or receive amounts from, a group's CDQ non-specific reserve. Thus, modifying the management of ''other species'' CDQ would mean that the CDQ non-specific reserve becomes non-beneficial to CDQ groups.

This action also would revise certain definitions associated with the CDQ Program in order to clarify their meaning within the context of both the groundfish CDQ allocation process and CDQ fisheries management. Current headings and definitions associated with the terms CDQ, CDQ species, PSQ, and PSQ species do not accurately portray the intended definitions and

common usage for such terms. Revisions to these definitions would distinguish among terms associated with apportionments that are derived from larger BSAI catch limits (CDQ reserves and PSQ reserves), acronyms associated with the actual amount of a reserve allocated to individual CDQ groups (CDQ and PSQ), and terms associated with biological categorization and catch accounting (CDQ species and PSQ species). Revising these definitions also would clarify CDQ catch monitoring and accounting requirements, as well as in-season management actions specific to the CDQ fisheries.

The proposed rule would revise the definition of CDQ species so that it refers only to those species allocated among the CDQ groups. The definition currently reads: ''CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31.'' This action would change the definition to read: ''CDQ species means any species or species group that is allocated from a CDQ reserve to a CDQ group.'' The term ''CDQ species'' is used primarily in § 679.32 to provide instructions for some of the catch accounting regulations that apply to species that are allocated among the CDQ groups. This proposed rule would not directly change any of the CDQ catch accounting requirements in § 679.32. However, because some of the requirements apply to ''CDQ species,'' the revised definition of ''CDQ species'' would indirectly change these catch accounting requirements to exclude ''other species.'' The only significant change that would occur would be that operators of catcher vessels required under § 679.32(c) to retain CDQ species until delivered to a shoreside processor or floating processor would no longer be required to retain species in the ''other species'' category (sharks, skates, sculpins, and octopi). The catch of ''other species'' by these catcher vessels, for purposes of managing the CDQ reserve, could be adequately monitored through the same methods used to estimate catch in the non-CDQ fisheries. These methods include landed catch reports from processors through shoreside logbooks or weekly production reports and observer data for ''other species'' catch by vessels with an observer onboard.

This action also would revise the headings of other definitions associated with the CDQ Program. Three definitions beginning with ''community development quota'' would be revised to use the acronym CDQ in the definitions' heading rather than the full term. These revisions would make the format of these three definitions similar to the format of other defined terms starting with the acronym CDQ. Similar definitions would be grouped together alphabetically, rather than be separated by a variety of non-CDQ related definitions. This change, along with the previously mentioned changes to other definitions, would increase the clarity and consistency of defined terms and offer NMFS and the public greater efficiency when referencing CDQ Program definitions. The proposed revisions to definitions are summarized in Table 1.

TABLE 1. PROPOSED CHANGES TO CDQ AND PSQ DEFINITIONS.

Definition	From	To
Revise § 679.2, heading and definition for ''community development quota.''.	Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program..	CDQ means community development quota and is the amount of a CDQ reserve that is allocated to a CDQ group.
Revise § 679.2, heading for definition of ''CDQ Program.''.	Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part..	CDQ Program means the Western Alaska Community Development Quota Program implemented under subpart C of this part.
Revise § 679.2, heading for definition of ''CDQ reserve.''.	Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program..	CDQ reserve means a percentage of each groundfish total allowable catch limit established under § 679.20(b)(1)(iii), a percentage of a catch limit for halibut, or a percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ Program.
Revise § 679.2, definition for ''CDQ species.'' ..	CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31..	CDQ species means any species or species group that is allocated from a CDQ reserve to a CDQ group.
Revise § 679.2, heading and definition for ''prohibited species quota.''.	Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii)..	PSQ means prohibited species quota and is the amount of a PSQ reserve that is allocated to a CDQ group.
Revise § 679.2, definition for ''PSQ reserve.'' ...	Not currently defined.	PSQ reserve means the percentage of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).
Revise § 679.2, definition for ''PSQ species.'' ...	PSQ species means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d)..	PSQ species means any species or species group that has been allocated from a PSQ reserve to a CDQ group.

This proposed rule also would amend the introductory paragraph that discusses CDQ reserves, a prohibition relating to calculating maximum retainable amounts of CDQ catch, and regulations explaining CDQ catch monitoring and accounting in order to consistently use terms defined in § 679.2. It would clarify how NMFS would manage groundfish CDQ reserves allocated among CDQ groups, including how NMFS would reconcile changes to

allocated CDQ reserve categories that result from any TAC category changes made during the annual BSAI harvest specifications process. CDQ and PSQ percentage allocations are approved for a fixed period, typically three years. The species or management areas comprising TAC categories can change annually for biological or management reasons. This action would allow NMFS to apply the approved percentage allocations for a given CDQ reserve category to any derivative CDQ reserve category that results from modifications made to TAC categories during the annual specifications process. For example, if the Council recommended, and NMFS approved, splitting an individual species out of the ''other flatfish'' TAC category, then NMFS would use the CDQ percentage allocations approved for ''other flatfish'' to allocate the new species category among CDQ groups for the remainder of a CDQ allocation cycle. This would ensure that annual CDQ allocations match annual TAC categories. Doing so would allow NMFS to more effectively administer, manage, and account for annual CDQ reserves and allocations should annual TAC categories be changed during an allocation cycle. Out of approximately 30 groundfish CDQ reserve categories, six reserve categories currently exist that could be split into subsidiary species or species groups and eight reserve categories that could be split into different management areas. This action also would revise a prohibition against using groundfish caught while CDQ fishing to calculate retainable amounts of non-CDQ species to clarify that groundfish accruing against a CDQ reserve, rather than CDQ species, may not be used as a basis species in such calculations.

Classification

The Assistant Administrator for Fisheries, National Marine Fisheries Service, determined that this proposed rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared to evaluate the impacts of this action on directly regulated small entities in compliance with the requirements of Section 603 of the Regulatory Flexibility Act. The reasons for the action, its objectives, and its legal basis have been described earlier in the preamble to this action.

For the proposed action, the small regulated entities include the six CDQ groups participating in the western Alaska CDQ Program. The preferred alternative does not appear to have adverse impacts on small entities because it would relieve a constraint that prevents CDQ groups from successfully harvesting portions of their annual CDQ allocations. The preferred alternative would modify the management of the ''other species'' CDQ reserve to discontinue allocating this reserve to CDQ groups. The objective of this proposed action is to facilitate greater success in harvesting royalty-generating CDQ target species. This is a beneficial impact.

Modifying the percentage contribution to the CDQ non-specific reserve was one of five alternatives initially considered as a means to modify the management of the ''other species'' CDQ reserve. Two alternatives were analyzed in detail. The first was a no action alternative that would continue to allocate the ''other species'' CDQ reserve to CDQ groups and the second alternative would allow NMFS to manage this reserve, rather than allocating it to CDQ groups. Three alternatives were considered by NMFS but not carried forward for further analysis based on a preliminary assessment of whether they were actually viable or not. The first rejected alternative would increase the percentage contribution from the arrowtooth flounder CDQ reserve to the non-specific CDQ reserve, thereby indirectly increasing the amount of ''other species'' available to CDQ groups. However, this percentage would be difficult to calculate accurately, as its efficacy would be affected by variables arising during future BSAI groundfish specifications processes. It is also possible that this alternative would lead to an arrowtooth flounder CDQ reserve that is insufficient to account for the catch of that particular species in CDQ fisheries, thereby shifting an accounting problem from one species category to another.

The second rejected alternative would be to not allocate ''other species'' to the CDQ Program. This would be contrary to the Magnuson-Stevens Act, which requires the Council and NMFS to allocate a percentage of the TAC of each Bering Sea fishery to the CDQ Program. The third rejected alternative would increase the amount of the annual ''other species'' TAC that is allocated to the ''other species'' CDQ reserve. Conversely, the amount of ''other species'' apportioned to the non-CDQ fisheries would decrease. This would require a determination of an ''other species'' apportionment between fishery components that would be difficult to accurately calculate and that could introduce an element of controversiality to this action. The Council did not request an expanded analysis of the additional three potential alternatives that were presented to them. Instead it chose to focus its deliberations on the two primary alternatives considered in the analysis.

The status quo is the alternative to the preferred action. The status quo would not lead to a modification of the management of the ''other species'' CDQ reserve. CDQ groups would still receive individual allocations of ''other species'' CDQ and be subject to a prohibition against exceeding a CDQ, including ''other species'' CDQ. The status quo was rejected because it would not relieve a constraint against the complete harvest of CDQ target species, would not accomplish the objective of this action, and because it would have a relatively adverse impact on small entities.

This regulation would not impose new recordkeeping or reporting requirements on the regulated small entities. The analysis for this action did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.2, the definitions for ''Community Development Quota,'' ''Community Development Quota Program,'' Community Development Quota reserve,'' and ''prohibited species quota'' are removed; the definitions for ''CDQ,'' ''CDQ Program,'' ''CDQ reserve,'' ''PSQ,'' and ''PSQ reserve'' are added in alphabetical order; and, the definitions for ''CDQ species'' and ''PSQ species'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ means community development quota and is the amount of a CDQ reserve that is allocated to a CDQ group.

* * * * *

CDQ Program means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

* * * * *

CDQ reserve means a percentage of each groundfish total allowable catch limit established under § 679.20(b)(1)(iii), a percentage of a catch limit for halibut, or a percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ Program.

CDQ species means any species or species group that is allocated from a CDQ reserve to a CDQ group.

* * * * *

PSQ means prohibited species quota and is the amount of a PSQ reserve that is allocated to a CDQ group.

* * * * *

PSQ reserve means the percentage of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

PSQ species means any species or species group that has been allocated from a PSQ reserve to a CDQ group.

* * * * *

3. In § 679.7, paragraph (d)(16) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(16) Use any groundfish accruing against a CDQ reserve as a basis species for calculating retainable amounts of non-CDQ species under § 679.20.

* * * * *

4. In § 679.31, the introductory paragraph is revised and paragraph (f) is revised to read as follows:

§ 679.31 CDQ Reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ groups in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of each CDQ reserve to any one group with an approved CDP.

* * * * *

(f) *Management of the Groundfish CDQ Reserves.* (1) *Groundfish CDQ reserves allocated among CDQ groups.*

(i) Except as limited by paragraph (f)(2) of this section, the groundfish CDQ reserves are apportioned among CDQ groups using percentage allocations approved by NMFS under § 679.30(d).

(ii) If the groundfish harvest specifications required by § 679.20(c) change the species comprising a TAC category or change a TAC category by combining or splitting management areas, then the CDQ percentage allocations approved by NMFS for the original TAC category will apply to any new categories.

(iii) A CDQ group is prohibited by 679.7(d)(5) from exceeding an annual groundfish CDQ amount allocated to it.

(iv) NMFS may specify limitations or prohibitions to prevent overfishing of any BSAI groundfish species, including measures specific to groundfish CDQ species allocated among CDQ groups (see § 679.20(d)(3)).

(2) *Groundfish CDQ reserves not allocated among CDQ groups.*

(i) The ''other species'' CDQ reserve, or individual species that comprise the ''other species'' CDQ reserve, will not be allocated among CDQ groups.

(ii) Groundfish CDQ reserves not allocated among CDQ groups will be managed at the CDQ reserve level under general limitations at § 679.20(d).

5. In § 679.32, paragraph (c)(1)(i) is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(1) *Catcher vessels without an observer.*

(i) *Operators of catcher vessels less than 60 ft (18.3 m) LOA* must retain all groundfish CDQ species, halibut CDQ, and salmon PSQ until it is delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part, discard of the groundfish CDQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by the State of Alaska.

* * * * *

[FR Doc. 03–26675 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 204

Wednesday, October 22, 2003

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

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the winter hardy lentil variety designated ''Morton'' is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the Washington State University Research Foundation of Pullman, Washington, an exclusive license to this variety.

DATES: Comments must be received on or before January 20, 2004.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the Washington State University Research Foundation of Pullman, Washington, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 03–26612 Filed 10–21–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Acting Director, Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1794, Environmental Policies and Procedures.

OMB Control Number: 0572–0117.

Type of Request: Extension of a previously approved collection with change.

Abstract: The information collection contained in this rule are requirements prescribed by the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and certain related Federal environmental laws, statutes, regulations, and Executive Orders.

RUS applicants provide environmental documentation, as prescribed by the rule, to assure that policy contained in NEPA is followed. The burden varies depending on the type, size, and location of each project, which then prescribes the type of information collection involved. The collection of information is only that information that is essential for RUS to provide environmental safeguards and to comply with NEPA as implemented by the CEQ regulations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 240 hours per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: 3.

Estimate Total Annual Burden on Respondents: 450,200 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (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 appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 16, 2003.

Curtis M. Anderson,

Deputy Administrator, Rural Utilities Service.

[FR Doc. 03–26582 Filed 10–21–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Awards Under the RUS Distance Learning and Telemedicine Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications selected to receive grant awards.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the recipients that were selected to receive grant awards during fiscal year (FY) 2003 under the Distance Learning and Telemedicine Grant Program.

ADDRESSES: Applications are available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Branch Chief, Distance Learning and Telemedicine Branch, U.S. Department of Agriculture, Rural Utilities Service. Telephone: (202) 720–0413, Fax (202) 720–1051. The list of awards may be viewed on the Internet at *http://www.usda.gov/rus/telecom/dlt/dlt.htm.*

SUPPLEMENTARY INFORMATION: Pursuant to 7 CFR 1703.101, RUS hereby publishes the names of the 84 organizations that have been awarded $32.5 million in grants under 7 CFR 1703, subpart D, Distance Learning and Telemedicine Grant Program. The recipients are as follows:

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM FY 2003 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS

State/Organization	Amount
Alaska:	
Denali Borough School District	$500,000
Kake City School District	490,000
Pribilof School District	500,000
Southeast Island School District	485,732
Yukon-Koyukuk School District	500,000
Arizona:	
Arizona Western College	487,978
Tuba City Regional Health Care	191,500
Arkansas:	
Arkansas School for Mathematics & Sciences	425,820
Parkers Chapel School District	354,850
California:	
Monterey County Office of Education	321,555
Oro Grande School District	500,000

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM FY 2003 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS—Continued

State/Organization	Amount
Colorado: Haxtun/Holyoke Distance Learning Consortium	145,914
Florida:	
Accelerated Care	237,975
Human Services Associates, Inc.	239,326
Georgia:	
Darton College—Instructional Technology and Distance Learning	62,000
Southwest Georgia Regional Services Agency	499,515
Hawaii: Molokai Ohana Health Care, Inc	283,500
Idaho:	
Idaho State University (Media/Distance Learning Center)	403,500
Lemhi County Economic Development Corporation	82,866
Illinois: Southern Illinois Collegiate Common Market	388,700
Indiana: Wilson Education Center	500,000
Iowa: Mercy Medical Center	287,362
Kansas:	
Unified School District #364	442,860
Unified School District #442	456,239
Kentucky: Pikeville College	74,661
Louisiana: Hospital Service District No. 2 of the Parish of LaSalle, Louisiana	262,000
Maine:	
Eastern Maine Healthcare	500,000
Regional Medical Center at Lubec	221,620
St. Joseph Healthcare Foundation	500,000
Maryland: Sheppard Pratt Health System, Inc	239,482
Massachusetts: Hampshire Educational Collaborative	210,101
Michigan:	
Borgess Health Alliance, Inc.	369,121
Cybernet Medical Corporation	496,588
MidMichigan Health Services	334,462
Wexford-Missaukee Intermediate School District	354,005
Minnesota:	
Lakewood Health System	494,115
St. Joseph Medical Center	472,239
Missouri: Lafayette Regional Health Center	89,928
Mississippi:	
Jackson County School District	500,000
Newton County School District	500,000
South Central Mississippi Consortium for Educational Excellence and Development	500,000
Montana: Benefis Healthcare Foundation	404,086
Nebraska: Educational Service Unit #5	153,300

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM FY 2003 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS—Continued

State/Organization	Amount
New Hampshire: Timberlane Regional School District	499,996
New Mexico: University of New Mexico—Gallup	478,555
New York: Madison-Oneida Board of Cooperative Educational Services	500,000
Moses-Ludington Hospital	499,800
St. Lawrence-Lewis BOCES	500,000
North Carolina: The University of North Carolina Center for Public Television	345,733
Ohio: Adams County Hospital	446,142
Oklahoma:	
Alva Hospital Authority dba Share Medical Center	484,296
Caddo Kiowa Technology Center	498,735
Choctaw Nation Health Services Authority	166,950
Guymon Public Schools	476,424
Western Oklahoma State College	495,200
Oregon:	
Rogue Community College District	237,137
Sacred Heart Medical Center Foundation (PHOR)	500,000
Samaritan North Lincoln Hospital	233,548
Pennsylvania:	
Albert Gallatin Area School District	500,000
Laurel Highlands School District	500,000
Warren County School District	500,000
South Carolina:	
Lee County School District	500,000
Williamsburg County School District	500,000
York Technical College	460,303
South Dakota:	
Avera St. Luke's Hospital	252,875
Evangelical Lutheran Good Samaritan Society	404,080
Southeast Area Cooperative	499,996
Tennessee:	
Lincoln Memorial University	398,094
The University of Tennessee Health Science Center	484,983
Texas:	
Coastal Bend College	475,000
Education Service Center Region XI	500,000
Mt. Pleasant Independent School District	441,426
Newton Economic Development Corporation	500,000
Region XIV Education Service Center	500,000
Utah: Confederated Tribes of the Goshute	235,621
Vermont:	
Central Vermont Home Health and Hospice, Inc.	314,000

USDA, RURAL UTILITIES SERVICE, TELECOMMUNICATIONS PROGRAM FY 2003 DISTANCE LEARNING AND TELEMEDICINE GRANT AWARDS—Continued

State/Organization	Amount
Dorset Nursing Association, Inc	254,650
Virginia: Carilion Health System	186,350
Washington:	
Big Bend Community College	500,000
Community Choice Healthcare Network	414,847
Wellpinit School District	250,000
West Virginia:	
Clay County Board of Education	500,000
Nicholas County School District	500,000
Wyoming: Rehabilitation Enterprises of North Eastern Wyoming (RENEW)	79,600

Dated: October 16, 2003.

Curtis M. Anderson,

Deputy Administrator for the Administrator, Rural Utilities Service.

[FR Doc. 03–26583 Filed 10–21–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Information and Communication Technology Survey

ACTION: Proposed collection; comment request.

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 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 December 22, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Department 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(s) and instructions should be directed to Charles Funk, U.S. Census Bureau, Room 1285–3, Washington, DC 20233–6400, (301) 763–3331 or via the Internet at *charles.allen.funk@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau proposes to collect selected non-capitalized expense data through the 2003 Information and Communication Technology Survey (ICT). This survey will be sent to a sample of approximately 46,000 private non-farm employer businesses operating in the United States. The proposed survey will collect industry-level data for two categories of non-capitalized expenses (purchases, additions, alterations, upgrades and enhancements; and, operating leases and rental payments) for four types of ICT equipment and software (computers and peripheral equipment; ICT equipment, excluding computers and peripherals; electromedical and electrotherapeutic apparatus; and, computer software, including payroll associated with software development). Companies will be asked to report data for industries in which they operate and incurred non-capitalized expenses. Industries in the survey will be comprised of 3-digit and selected 4-digit 1997 North American Industry Classification System codes.

The Bureau of Economic Analysis (BEA), Federal Reserve Board, Bureau of Labor Statistics and industry analysts need these data to evaluate productivity and economic growth prospects. In addition, the proposed survey will provide improved source data significant to the BEA's investment component of Gross Domestic Product, capital stock estimates, and capital flow tables.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Employer companies will be mailed one of three forms based on their diversity of operations and number of industries with payroll. Companies that operate in only one industry will receive an ICT–1 (S) form. Companies that operate in more than one but less than nine industries will receive an ICT–1 (M) form. And, companies that operate in nine or more industries will receive an ICT–1 (L). Respondent companies are permitted to respond via facsimile machine to our toll-free number. Companies will be asked to respond to the survey within 30 days of the initial mailing. Letters and/or telephone calls encouraging participation will be directed to companies that have not responded by the designated time.

III. Data

OMB Number: None.

Form Number: ICT–1 (S), ICT–1 (M), ICT–1 (L).

Type of Review: New Collection.

Affected Public: Business or other for-profit organizations, non-profit institutions, small businesses and organizations.

Estimated Number of Respondents: Approximately 46,000 employer companies.

Estimated Time Per Response: The average for all respondents is 1.63 hours with the range from less than 1 hour to 20 hours.

Estimated Total Annual Burden Hours: 74,980 hours.

Estimated Total Annual Cost to Respondents: $1.6 million.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 182, 224, and 225.

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: October 18, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26662 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Annual Capital Expenditures Survey

ACTION: Proposed collection; comment request.

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 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 December 22, 2003.

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(s) and instructions should be directed to Charles Funk, U.S. Census Bureau, Room 1285–3, Washington, DC 20233–6400, (301) 763–3331 or via the Internet at *charles.allen.funk@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans the continuing information collection for the 2003 Annual Capital Expenditures Survey (ACES). The annual survey collects data on fixed assets and depreciation, sales and receipts, capitalized computer software, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Industrial sectors covered by the survey are based on the 1997 North American Industrial Classification System. Both employer and nonemployer companies are included in the survey.

The Bureau of Economic Analysis, the primary Federal user of our annual program statistics, uses the information in refining and evaluating annual estimates of investment in structures and equipment in the national income and product accounts, compiling annual input-output tables, and computing gross domestic product by industry. The Federal Reserve Board uses the data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics uses the data to improve estimates of capital stocks for productivity analysis.

Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

The major change from previous ACES is the collection of detailed capital expenditures by type of structure and type of equipment for the 2003 ACES from employer companies. Beginning with the 1998 ACES, these detailed data are collected together every five years. These data are critical to evaluate the comprehensiveness of capital expenditures statistics collected in years for which types of structures and equipment detail are not collected. The detailed structures data will provide a 5-year benchmark for estimates of new construction put in place. The detailed equipment data will provide a periodic measure of expenditures by type of equipment and assist in evaluating estimates of private equipment and software component of nonresidential fixed investment. Discussions are currently taking place with data users on the level of detailed type of structures and type of equipment data to be collected.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Employer companies will be mailed one of three forms based on their diversity of operations and number of industries with payroll. Companies that operate in only one industry will receive an ACE–1 (S) form. Companies operating in more than one, but less than nine industries will receive an ACE–1 (M) form. And, companies that operate in nine or more industries will receive an ACE–1 (L). All nonemployer companies will receive ACE–2 forms. Respondent companies are permitted to respond via facsimile machine using our toll-free number. Companies will be asked to respond to the survey within 30 days of the initial mailing. Letters and/or telephone calls encouraging participation will be directed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0782.

Form Number: ACE–1(S), ACE–1(M), ACE–1(L), and ACE–2.

Type of Review: Regular Review.

Affected Public: Business or other for-profit organizations, non-profit institutions, small businesses or organizations, and self-employed individuals.

Estimated Number of Respondents: Approximately 61,000 (46,000 employer companies, and 15,000 nonemployer businesses).

Estimated Time Per Response: The average for all respondents is 3.33 hours. For employer companies completing form ACE–1, the range is from 2 to 28 hours, averaging 4.09 hours. For nonemployer companies completing form ACE–2, the range is less than 1 hour to 2 hours, averaging 1 hour.

Estimated Total Annual Burden Hours: 203,000 hours.

Estimated Total Annual Cost to Respondents: $4 million.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 182, 224, and 225.

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: October 18, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26663 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

International Buyer Program: Application and Exhibitor Data

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 the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 35068(2)(A)).

DATES: Written comments must be submitted on or before December 22, 2003.

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 the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jim Boney, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2116, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–0146, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's International Buyer Program (IBP) encourages international buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The program has been successful, having substantially increased the number of foreign visitors attending these selected shows as compared to the attendance when not supported by the program. The number of shows selected to the program increased from 10 in FY 1986 to 28 in FY 2001 and will increase to 32 shows in FY 2004. Among the criteria used to select these shows are: export potential, international interest, scope of show, stature of show, exhibitor interest, overseas marketing, logistics, and cooperation of show organizers.

II. Method of Collection

Form ITA–4014P, Exhibitor Data, is used to determine which U.S. firms are interested in meeting with international business visitors and the overseas business interest of the exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in an IBP domestic trade show and is used to list the firm and its products in and Export Interest Directory which is distributed to international buyer delegation members visiting the event and made available for use by Foreign Commercial Officers in recruiting delegations of international buyers to attend the show.

The Form ITA–4102P, Application, is used by potential show organizers to demonstrate (1) their experience, (2) ability to meet the special conditions of the IBP, and (3) provide information about the domestic trade show such as the number of U.S. exhibitors and the percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors.

III. Data

OMB Number: 0625–0151.

Form Number: ITA–4014P and ITA–4102P.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 6,470.

Estimated Time Per Response: 10 minutes and 180 minutes (Avg.).

Estimated Total Annual Burden Hours: 1,277 hours.

Estimated Total Annual Costs: $63,267.

The estimated annual cost for this collection is $63,267 ($44,683 for respondents and $18,584 for federal government employees).

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: October 18, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26661 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–EP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce is extending the time limit for the final results of the new shipper review of the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China. The period of review for the new shipper review of Yantai Golden Tide Fruits & Vegetable Food, Co., Ltd. is June 1, 2002 through November 30, 2002.

EFFECTIVE DATE: October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey R. Twyman or John Brinkmann, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3534 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 2003, the Department of Commerce (''the Department'') issued the preliminary results of the new shipper review for certain non-frozen apple juice concentrate from the People's Republic of China (''PRC'') for Yantai Golden Tide Fruits & Vegetable Food, Co., Ltd. (''Golden Tide''), covering June 1, 2002 through November 30, 2002. *See Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of New Shipper Review*, 68 FR 44741 (July 30, 2003) (''Preliminary Results''). The final results are currently due no later than October 21, 2003.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of a new shipper review within 90 days after the date on which the new shipper review preliminary result is issued. However, if the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend this deadline for the final results of the new shipper review to a maximum of 150 days.

Postponement

The Department has determined that it is not practicable to issue the final results within the original time period. This case has become extraordinarily complicated in light of case events. In particular, verification in the PRC that was originally scheduled to occur earlier in the proceeding was delayed due to restrictions on travel to the PRC. The additional time is required in order to allow parties adequate time to comment on the findings of the verification and to comment on the Department's preliminary results. Also, additional time is necessary to analyze data used in the calculation of normal value. Therefore, in accordance with

section 751 (a)(2)(B)(iv) of the Act, we are postponing the final results of this new shipper review for 145 days, until no later than December 15, 2003.

This notice is published pursuant to sections 777(i)(1) and 751(a)(1) of the Act.

Dated: October 16, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–26677 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Second Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the second administrative review and new shipper review of Gansu Tongda Fruit Juice and Beverage Co., Ltd. of the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China. Gansu Tongda Fruit Juice and Beverage Co., Ltd. agreed to waive the time limits for the new shipper review in order to align the schedule with the annual administrative review overlapping the same time period, pursuant to 19 CFR 351.214(j)(3). The period of review for the second review and new shipper review is June 1, 2001 through May 31, 2002.

EFFECTIVE DATE: October 22, 2003.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Audrey R. Twyman or John Brinkmann, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3534 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of its administrative review and new shipper review for Gansu Tongda Fruit Juice and Beverage Co., Ltd. (''Gansu Tongda'') for certain non-frozen apple juice concentrate from the People's Republic of China (''PRC''), covering June 1, 2002 through May 31, 2002. *See Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review*, 68 FR 40244 (July 7, 2003) (''Preliminary Results''). The final results are currently due no later than November 4, 2003.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of a new shipper review within 90 days after the date on which the new shipper review preliminary result is issued. However, if the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend this deadline for the final results if necessary. Section 751(a)(3)(A) of the Act requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary result is published. However, if it is not practicable to complete the review within the allocated time, section 751(a)(2)(B)(iv) of the Act allows the Department to extend publication of the final results for an additional 60 days.

Postponement

The Department has determined that it is not practicable to issue the final results within the original time period. This case has become extraordinarily complicated in light of case events. In particular, verification in the PRC that was originally scheduled to occur earlier in the proceeding was delayed due to restrictions on travel to the PRC. The additional time is required in order to allow parties adequate time to comment on the findings of the verification and to comment on the Department's preliminary results. Also, additional time is necessary to analyze data used in the calculation of normal value. Therefore, in accordance with sections 751(a)(2)(B)(iv) and 751(a)(3)(A) of the Act, we are postponing the final results of this second administrative review and new shipper review, until no later than December 15, 2003.

This notice is published pursuant to sections 777(i)(1) and 751(a)(1) of the Act.

Dated: October 16, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–26678 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Michigan; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–038. *Applicant:* University of Michigan, Ann Arbor, MI 48109–2150. *Instrument:* Eye Fixation System, Model faceLAB 3.0. *Manufacturer:* Seeing Machines, Australia. *Intended Use:* See notice at 68 FR 48341, August 13, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A completely ''off-head'' sensor system, (2) precise synchronization with a driving simulator, (3) effective operation in both bright (sunlight) and dim (simulator) environments and (4) superior software for collection and processing of data. A university driving research laboratory advised October 2, 2003 that (1) These capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–26679 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California—Berkeley, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–042. *Applicant:* University of California, Lawrence Berkeley National Laboratory, Berkeley, CA 94720. *Instrument:* Electron Microscope, Model Tecnai G 2 20 S–TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 68 FR 53547, September 11, 2003. *Order Date:* April 30, 2003.

Docket Number: 03–044. *Applicant:* University of California, Los Alamos National Laboratory, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model JEM–2010 and Accessories. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 68 FR 53548, September 11, 2003. *Order Date:* July 31, 2003.

Docket Number: 03–045. *Applicant:* Indiana University School of Medicine, Indianapolis, IN 46202. *Instrument:* Electron Microscope, Model Tecnai G 2 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 53548, September 11, 2003. *Order Date:* July 14, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–26680 Filed 10–21–03; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 7, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–26779 Filed 10–20–03; 1:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 14, 2003.

PLACE: 1155 21st St., NW., Washington, DC., Room 1012

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–26780 Filed 10–20–03; 1:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 21, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–26781 Filed 10–20–03; 1:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 28, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–26782 Filed 10–20–03; 8:45 am]

BILLING CODE 6531–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Electrochemical Products, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant to Electrochemical Products, Inc., a revocable, nonassignable, partially exclusive license to practice in the United States and certain foreign countries, the Government-Owned inventions, as identified in U.S. Patent Number 6,375,726 entitled ''Corrosion Resistant Coatings for Aluminum and Aluminum Alloys'', Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing. U.S. Patent Number 6,511,532 entitled ''Post Treatment for Anodized Aluminum'', Navy Case No. 83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filling. U.S. Patent Number 6,521,029 entitled Pretreatment for Aluminum and Aluminum Alloys'', Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003. U.S. Patent Number 6,527,841 entitled ''Post Treatment for Metal Coated Substrates'', Navy Case No.83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing, in the field of corrosion prevention.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than 20 October 2003.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center

Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

FOR FUTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, telephone (301) 342–5586. Due to U.S. Postal delays, please fax: (301) 342–1134, E-Mail: *paul.fritz@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: October 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26640 Filed 10–21–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Henkel Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant to Henkel Corporation, a revocable, nonassignable, partially exclusive license to practice in the United States and certain foreign countries, the Government-Owned inventions, as identified in U.S. Patent Number 6,375,726 entitled ''Corrosion Resistant Coatings for Aluminum and Aluminum Alloys'', Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing. U.S. Patent Number 6,511,532 entitled ''Post Treatment for Anodized Aluminum'', Navy Case No. 83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filling. U.S. Patent Number 6,521,029 entitled Pretreatment for Aluminum and Aluminum Alloys'', Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003. U.S. Patent Number 6,527,841 entitled ''Post Treatment for Metal Coated Substrates'', Navy Case No. 83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing, in the field of corrosion prevention.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than 20 October 2003.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, telephone (301) 342–5586. Due to U.S. Postal delays, please fax: (301) 342–1134, E-Mail: *paul.fritz@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: October 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26641 Filed 10–21–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Luster-On Products, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant to Luster-On Products, Inc., a revocable, nonassignable, partially exclusive license to practice in the United States and certain foreign countries, the Government-Owned inventions, as identified in U.S. Patent Number 6,375,726 entitled ''Corrosion Resistant Coatings for Aluminum and Aluminum Alloys'', Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing. U.S. Patent Number 6,511,532 entitled ''Post Treatment for Anodized Aluminum'', Navy Case No. 83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filing. U.S. Patent Number 6,521,029 entitled Pretreatment for Aluminum and Aluminum Alloys'', Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003. U.S. Patent Number 6,527,841 entitled ''Post Treatment for Metal Coated Substrates'', Navy Case No. 83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing, in the field of corrosion prevention.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than 20 October 2003.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, telephone (301) 342–5586. Due to U.S. Postal delays, please fax: (301) 342–1134, E-Mail: *paul.fritz@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: October 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26638 Filed 10–21–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; MacDermid, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant to MacDermid, Inc., a revocable, nonassignable, partially exclusive license to practice in the United States and certain foreign countries, the Government-Owned inventions, as identified in U.S. Patent Number 6,375,726 entitled ''Corrosion Resistant Coatings for Aluminum and Aluminum Alloys'', Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing. U.S. Patent Number 6,511,532 entitled ''Post Treatment for Anodized Aluminum'', Navy Case No. 83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filling. U.S. Patent Number 6,521,029 entitled Pretreatment for Aluminum and Aluminum Alloys'', Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003. U.S. Patent Number 6,527,841 entitled ''Post Treatment for Metal Coated Substrates'', Navy Case No. 83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing, in the field of corrosion prevention.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than 20 October 2003.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, telephone (301) 342–5586. Due to U.S. Postal delays, please fax: (301) 342–1134, E-Mail: *paul.fritz@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: October 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26636 Filed 10–21–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; METALAST International, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant to METALAST International, Inc., a revocable, nonassignable, partially exclusive license to practice in the United States and certain foreign countries, the Government-Owned inventions, as identified in U.S. Patent Number 6,375,726 entitled ''Corrosion Resistant Coatings for Aluminum and Aluminum Alloys'', Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing. U.S. Patent Number 6,511,532 entitled ''Post Treatment for Anodized Aluminum'', Navy Case No. 83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filling. U.S. Patent Number 6,521,029 entitled Pretreatment for Aluminum and Aluminum Alloys'', Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003. U.S. Patent Number 6,527,841 entitled ''Post Treatment for Metal Coated Substrates'', Navy Case No.83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing, in the field of corrosion prevention.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than 20 October 2003.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

FOR FUTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, telephone (301) 342–5586. Due to U.S. Postal delays, please fax: (301) 342–1134, E-Mail: *paul.fritz@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: October 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26639 Filed 10–21–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; SurTec International, GmbH

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant to SurTec International, GmbH, a revocable, nonassignable, partially exclusive license to practice in the United States and certain foreign countries, the Government-Owned inventions, as identified in U.S. Patent Number 6,375,726 entitled ''Corrosion Resistant Coatings for Aluminum and Aluminum Alloys'', Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing. U.S. Patent Number 6,511,532 entitled ''Post Treatment for Anodized Aluminum'', Navy Case No. 83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filling. U.S. Patent Number 6,521,029 entitled Pretreatment for Aluminum and Aluminum Alloys'', Navy Case No. 83393, Inventors Matzdorf *et al.*, Issue Date 18 Feb 2003. U.S. Patent Number 6,527,841 entitled ''Post Treatment for Metal Coated Substrates'', Navy Case No. 83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing, in the field of corrosion prevention.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than 20 October 2003.

ADDRESSES: Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Road, Patuxent River, MD 20670, telephone (301) 342–5586. Due to U.S. Postal delays, please fax: (301) 342–1134, E-Mail: *paul.fritz@navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: October 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26637 Filed 10–21–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On October 2, 2003, the Department of Education published a 30-day public comment period notice under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001) in the **Federal Register** (Page 56821, Column 2) for the information collection, ''Application for Vocational and Technical Education and Adult Education Direct Grants''. The following corrections are being made: ''Type of Review'' is corrected from ''Extension'' to ''Revision''. The number of responses is corrected from 569 to 33 and the number of burden hours corrected from 73,970 to 1,320. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.*

Dated: October 16, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 03–26625 Filed 10–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Plymouth Generating Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for interconnection of the Plymouth Generating Facility (PGF) into the Federal Columbia River Transmission System (FCRTS), based on the Plymouth Generating Facility Final Environmental Impact Statement (DOE/EIS–0345, June 2003). The interconnection would occur at BPA's proposed McNary-John Day 500-kilovolt (kV) transmission line at a point approximately 4.7 miles west of BPA's McNary Substation near the rural community of Plymouth in Benton County, Washington.

ADDRESS: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *http://www.efw.bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Dawn Boorse, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *drboorse@bpa.gov.*

SUPPLEMENTARY INFORMATION: The PGF, which has been proposed by Plymouth Energy, LLC (Plymouth Energy), involves construction and operation of a 307-megawatt (MW) natural gas-fired, combined-cycle power generation facility on a 44.5-acre site 2 miles west of Plymouth in Benton County, Washington. The facility would include a natural gas-fired combustion turbine generator and a steam turbine generator. Other major equipment would include a heat recovery steam generator, condensing/cooling system, water treatment system, water storage tanks and a switchyard that would include transformers and switching equipment.

BPA will enter into a Generation Interconnection Agreement with Plymouth Energy that provides for the interconnection of the PGF with the FCRTS and the operation of the PGF in the BPA Control Area. In addition, a Construction, Operations and Maintenance Agreement is necessary to provide for construction activities and continued operations and maintenance of facilities. The PGF interconnection would be a 0.6-mile 500-kV transmission line that would extend from the PGF north to an interconnection point on the proposed BPA 500-kV McNary-John Day transmission line. Four to six transmission towers, approximately 100 to 140 feet in height, would be installed to support the 0.6-mile line. The BPA right-of-way corridor currently includes two lines, one operating at 230-kV (known as the McNary-Horse Heaven 230-kV transmission line) and the second at 345-kV (known as the Ross-McNary 345-kV transmission line). The 500-kV McNary-John Day transmission line would therefore be the third line in this corridor. BPA completed its National Environmental Policy Act process for this proposed line in November 2002.

Issued in Portland, Oregon, on October 14, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–26651 Filed 10–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Supplemental Electric Power Program Survey to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq.).

DATES: Comments must be filed by November 21, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bill Nickerson, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*William_Nickerson@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at 202–395–7151 (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at 202–287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form EIA–411, 412, 423, 767, 826, 861, 906, and 920, ''Electric Power Program.''
2. Energy Information Administration.
3. OMB Number 1905–0129.
4. Three-year extension and revision.
5. Mandatory (all forms except EIA–411) and voluntary (EIA–411).
6. The electric power surveys collect electric power information including capacity, generation, fuel consumption, fuel receipts, fuel stocks, and prices, along with financial information. Respondents include both regulated and unregulated entities that comprise the U.S. electric power industry. Electric

power data collected are used by the Department of Energy for analysis and forecasting. Data are published in various EIA reports.

7. Business or other for-profit; State, local, or tribal government; Federal government.

8. 173,990 burden hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13)(44 U.S.C. 3501 et seq.).

Issued in Washington, DC, October 16, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–26652 Filed 10–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Oil and Gas Reserves System Surveys to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by November 21, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bill Nickerson, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*William_Nickerson@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–7151. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–23, 23P, and 64A, ''Oil'' and Gas Reserves System Surveys''

2. Energy Information Administration

3. OMB Number 1905–0057

4. Three-year extension

5. Mandatory

6. EIA's Oil and Gas Reserves Systems Surveys collect data used to estimate reserves of crude oil, natural gas, and natural gas liquids, and to determine the status and approximate levels of production. Data are published by EIA and used by public and private analysts. Respondents are operators of oil wells, natural gas wells, and natural gas processing plants.

7. Business or other for-profit

8. 79,024 hours (4,103 respondents times 1 responses per year times 19.260 hours per response).

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the FOR **FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13)(44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, October 14, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–26653 Filed 10–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–7–000]

Alliance Pipeline L.P.; Notice of Proposed Changes In FERC Gas Tariff

October 14, 2003.

Take notice that on October 1, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No 1, Original Sheet No. 277A, to be effective November 1, 2003.

Alliance states that the tariff sheet is being filed to establish a new Section 41 of the General Terms and Conditions of Alliance's FERC Gas Tariff, which addresses the use of offsystem capacity acquired by Alliance, as well as waiver of the shipper-must-hold-title rule.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00079 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–142–004 and CP01–260–003]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

October 10, 2003.

Take notice that on October 1, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing filed the following revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, bearing a proposed effective date of November 1, 2003:

Fifth Revised Sheet No. 500B

On December 20, 2002, the Commission issued an Order Issuing Certificate, Granting Abandonment Authority, and Vacating Certificate in the above-referenced proceedings (the Certificate Order). Ordering Paragraph D provided that, [w]ithin 30 days before the commencement of service, Columbia must file its executed service agreements as discussed in the body of this order. Ordering Paragraph E provided that, [b]etween 30 and 60 days before the commencement of service, Columbia must file a revised tariff sheet adding its project service agreements to its list of non-conforming service agreements in its tariff.

Columbia states that the appropriate non-conforming provisions have been removed, and the FTS Service Agreements are now in a form approved by the Commission in the Certificate Order.

Columbia states that copies of its filing and have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. This filing 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 eLibrary (e-Filing) link.

Protest Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00099 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–23–000]

Gas Transmission Northwest Corporation, (Formerly PG&E Gas Transmission, Northwest Corporation); Notice of Change in Corporate Name

October 14, 2003.

Take notice that on October 7, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing its entire FERC Gas Tariff, Third Revised Volume No. 1–A. GTN states that it is revising its tariff to reflect a change in its Corporate name from PG&E Transmission, Northwest Corporation (PG&E GT–NW). GTN requests that the Commission accept the above-referenced tariff sheets to be effective October 6, 2003.

GTN further states that a copy of the filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00078 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–014]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

October 14, 2003.

Take notice that on October 3, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, reflecting an effective date of October 1, 2003:

Original Sheet No. 8L
Original Sheet No. 8M

Gulfstream states that this filing is being made to implement a negotiated rate transaction under Rate Schedule ITS pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff.

Gulfstream also states that the tariff sheets being filed herewith identify and describe the negotiated rate agreement,

including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract term, and the contract quantity. Gulfstream further states that the proposed tariff sheets include footnotes where necessary to provide further details on the agreement listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. Docket No. RP02–361–014.

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00074 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–4–000, CP04–5–000, and CP04–6–000]

Lake Charles Express LLC; Notice of Filing

October 14, 2003.

Take notice that on October 3, 2003, Lake Charles Express LLC (LCE), 5444 Westheimer, Suite 1775, Houston, TX 77056, filed in the captioned dockets an application for a certificate of public convenience and necessity and related authorizations pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations. LCE requests authorization to construct, own, operate and maintain certain facilities (LCE Project) to ultimately provide up to 1.2 million Dth per day of firm transportation service to BG LNG Services, LLC (BGLS). To meet the specific requirements of BGLS, LCE has planned the construction of the LCE Project facilities to provide for an in-service date of January 1, 2005. The application is on file with the Commission and open for public inspection. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

An open season for service utilizing the LCE Project facilities was conducted from June 6, 2003 through June 16, 2003. The open season resulted in LCE entering into a Precedent Agreement and a Service Agreement with BGLS for 1,200,000 Dth/d of firm transportation service pursuant to Rate Schedule FT–1, for a term of 20 years.

LCE proposes to construct, own, operate, and maintain approximately 37.85 miles of 30-inch and 36-inch diameter pipeline, originating at an interconnection with the liquefied natural gas import terminal of Trunkline LNG Company, LLC (''TLNG'') in Calcasieu Parish, Louisiana, and terminating at an interconnection with the facilities of Texas Eastern Transmission, LP (Texas Eastern) in the vicinity of Texas Eastern's Gillis Compressor Station in Beauregard Parish, Louisiana. LCE also proposes to construct interconnection facilities at the TLNG import terminal, eleven meter and regulation (M&R) and associated interconnect facilities along the pipeline route, and two parallel 1,717-foot 16-inch diameter lateral pipelines to interconnect with the facilities of one intrastate pipeline.

Specifically, LCE requests authorization to construct:

1. An interconnection with the facilities of TLNG at the TLNG outlet header on the premises of the TLNG import terminal in Calcasieu Parish, Louisiana, consisting of two tap valves with meter and regulation facilities, interconnecting piping, and an electronic gas measurement building;

2. Approximately 22.84 miles of 36-inch diameter pipeline, originating at the interconnection with TLNG and terminating at Texas Eastern's Iowa Gas Plant in Jefferson Davis Parish, Louisiana (South Segment);

3. Approximately 15.01 miles of 30-inch diameter pipeline, extending from the Iowa Gas Plant to an interconnection with the facilities of Texas Eastern in the vicinity of Texas Eastern's Gillis Compressor Station in Beauregard Parish, Louisiana (North Segment);

4. Five M&R and associated facilities along the South Segment to provide interconnections with (i) Sabine Gas Transmission Company in Calcasieu Parish; (ii) Cantera Natural Gas, Inc. (Cantera) at two interconnect locations in Calcasieu Parish; (iii) Calcasieu Gas Gathering System in Calcasieu Parish; and (iv) Texas Eastern where the proposed pipeline enters the Iowa Gas Plant in Jefferson Davis Parish;

5. Six M&R and associated facilities along the North Segment to provide interconnections with (i) Texas Eastern where the proposed pipeline exits the Iowa Gas Plant in Jefferson Davis Parish, and including a bypass regulator; (ii) Texas Gas Transmission Corporation in Jefferson Davis Parish; (iii) Florida Gas Transmission Company in Jefferson Davis Parish; (iv) Tennessee Gas Pipeline Company in Jefferson Davis Parish; (v) Transcontinental Gas Pipe Line Corporation in Beauregard Parish; and (vi) Texas Eastern near the Gillis Compressor Station in Beauregard Parish;

6. Two parallel 1,717-foot, 16-inch diameter lateral pipelines, extending from the proposed LCE Project pipeline to the Cantera facility in Calcasieu Parish; and

7. Appurtenant facilities.

Firm transportation service will be rendered to BGLS pursuant to LCE's Rate Schedule FT–1. BGLS will pay incremental FT–1 rates to compensate LCE for the costs of the LCE Project facilities, which are estimated to be approximately $72.3 million.

Any questions regarding the application are to be directed to Kerri Roberts, Lake Charles Express LLC, 5444 Westheimer, Suite 1775, Houston, Texas 77056.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888

First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments 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.

Comment Date: November 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00082 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–622–000]

National Fuel Gas Supply Corporation; Notice of Petition for Waiver of Tariff Provisions

October 14, 2003.

Take notice that on September 29, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing a Petition for Waiver of Tariff Provisions in connection with a transportation service for EOG Resources, Inc. (EOG).

National Fuel requests: (1) a waiver of its FT Rate Schedule's requirement to install real time measurement at all primary receipt points, because such measurement is not operationally required in this instance; and (2) a waiver of provisions concerning facility costs and financial assurances that would permit the parties' agreed deferred contribution-in-aid-if-construction mechanism and associated financial assurances related to a proposed facility construction project.

National Fuel is requesting that the Commission grant the requested waiver by November 1, 2003, so that the transaction may proceed as contemplated by the parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00075 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–632–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

October 14, 2003.

Take notice that on September 30, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Seventh Revised Sheet No. 9, to become effective October 1, 2003.

National states that Article II, Sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, Section 2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.53 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering

service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00077 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–092]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

October 14, 2003.

Take notice that on October 1, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sixth Revised Sheet No. 414, to be effective October 1, 2003.

Natural states that the purpose of this filing is to update its list of non-conforming agreements. Also, Natural tenders for filing copies of the Firm Transportation Rate Discount Agreement with The Board of Trustees of University of Illinois.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00081 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1337–000]

Northeast Utilities Service Company; Notice of Filing

October 3, 2003.

Take notice that on September 15, 2003, Northeast Utilities Service Company (NUSCO) on behalf of its operating company affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power and Electric Company and Holyoke Water Power Company (the NU Companies) submitted for filing a fourth amendment to the Settlement Agreement approved by the Commission in Northeast Utilities Service Company, 88 FERC ¶ 61,006 (the Settlement) to extend the rates, terms and conditions of the Settlement for an additional period of thirty days commencing on September 14, 2003.

NUSCO states that it does not consider this filing to constitute a rate change within the meaning of 18 CFR 35.13. To the extent that the Commission disagrees, NUSCO requests that the Commission waive the requirements of 18 CFR 35.13.

NUSCO states that a copy of this filing has been mailed to the service list. NUSCO requests an effective date of September 14, 2003 and requests any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Any person desiring to intervene or to protest this filing should file 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 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659. 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.

Comment Date: October 14, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00092 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–629–000]

Northern Border Pipeline Company; Notice of Tariff Filing

October 14, 2003.

Take notice that on September 30, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of November 1, 2003.

Northern Border states that the purpose of this filing is to revise the necessary tariff sheets to assure that the electronically executed form of Service Agreement, applicable tariff sheets and pro forma Service Agreements under Rate Schedules T–1, T–1B, IT–1, and PAL do not contain any material deviation that goes beyond filling in the blank spaces or that affects the substantive rights of the parties in any way. Additionally, Northern Border is making some minor housekeeping changes.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00076 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–051]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

October 14, 2003.

Take notice that on October 3, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Nineteenth Revised Sheet No. 15, to be effective October 3, 2003.

GTN states that a copy of the filing has been served on GTN's jurisdictional customers and interested State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Comment Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00071 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

Power Authority of the State of New York; Notice Granting Late Intervention

October 10, 2003.

On May 22, 2002, the Commission issued a notice of application accepted for filing and solicitation of motions to intervene and protests for the St. Lawrence-FDR Power Project 2000, located on the St. Lawrence River in St. Lawrence County, New York. The notice established July 22, 2002, as the deadline for filing motions to intervene.

On March 28, 2003, Congressman Dennis J. Kucinich, representing Ohio's 10th Congressional District, filed an untimely motion to intervene and comments. Granting the motion to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene filed by Congressman Dennis J. Kucinich is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00096 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–8–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 14, 2003.

Take notice that on October 1, 2003, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to become effective November 1, 2003.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, Third

[1] 18 CFR 385.214 (2003).

Revised Volume No. 1. The revised tariff sheets listed on Appendix A reflect: a 0.10% increase (Field Zone to Zone 2), a 0.05% increase (Zone 1A to Zone 2), a 0.07% decrease (Zone 1B to Zone 2), a 0.22% decrease (Zone 2 only), a 0.21% increase (Field Zone to Zone 1B), a 0.16% increase (Zone 1A to Zone 1B), a 0.04% increase (Zone 1B only), a 0.06% increase (Field Zone to Zone 1A), a 0.01% increase (Zone 1A only) and a 0.06% decrease (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 ''e-Filing'' link.

Intervention and Protest Date: October 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00080 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG04–1–000, et al.]

Colorado Wind Ventures, LLC, et al.; Electric Rate and Corporate Filings

October 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Colorado Wind Ventures, LLC

[Docket No. EG04–1–000]

Take notice that on October 1, 2003, Colorado Wind Ventures, LLC (Colorado Wind) filed with the Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR 365 of the Commission's regulations.

PPM Colorado Wind Ventures states that it is a wholly owned subsidiary of PPM Energy, Inc., an Oregon corporation (PPM). PPM is a wholly owned subsidiary of PacifiCorp Holdings, Inc., a Delaware corporation with general offices in Portland, Oregon (PHI). PHI is a wholly owned subsidiary of NA General Partnership, a Nevada general partnership (NAGP). NAGP's two partners are ScottishPower NA 1 Limited and ScottishPower NA 2 Limited. ScottishPower NA 1 Limited and ScottishPower NA 2 Limited are private limited companies incorporated in Scotland and are wholly owned subsidiaries of ScottishPower plc, a public limited corporation organized under the laws of Scotland.

Colorado Wind states that it is in the process of acquiring Colorado Green Holdings, LLC, a Delaware limited liability company (Colorado Green) and that Colorado Green will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling electric energy at wholesale. Colorado Wind further states that Colorado Green is developing an approximately 162-megawatt wind power generation facility to be located in Prowers County, Colorado (the Project) that will be an eligible facility pursuant to Section 32(a) of the Public Utility Holding Act of 1935, and as such, will be engaged indirectly, through one or more affiliates, exclusively in the business of owning and/or operating one or more eligible facilities and selling at wholesale at market-based rates electric energy from the Project.

Colorado Wind states that it has served a copy of the filing on the Public Utilities Commission of Colorado, the California Public Utilities Commission, the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the Utah Public Service Commission, the Idaho Public Utilities Commission, and the Wyoming Public Service Commission as ''affected state commissions'' under 18 CFR 365.2(b)(3), and the Securities and Exchange Commission.

Comment Date: October 29, 2003.

2. Northeast Utilities Service Company

[Docket No. EL03–28–001]

Take notice that on September 29, 2003, Northeast Utilities Service Company, on behalf of itself and The Connecticut Light and Power Company (CL&P), and Select Energy, Inc., tendered for filing proposed changes to the November 30, 1994 System Power Sales Agreement by and between CL&P, the Connecticut Municipal Electric Energy Cooperative and the Town of Wallingford, Connecticut, Department of Public Utilities, Electric Division. This filing is made in compliance with the Commission's September 12, 2003 Order in Docket No. EL03–28–000.

Comment Date: October 28, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. EL03–236–000]

Take notice that on September 30, 2003, PJM Interconnection, L.L.C. (PJM) pursuant to Section 206 of the Federal Power Act and in compliance with the Commission's directives in *Reliant Energy Mid-Atlantic Power Holdings, LLC* v. *PJM Interconnection L.L.C.*, 104 FERC ¶ 61,040 (2003), submitted amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection L.L.C., regarding mitigation of local market power.

PJM states that copies of this filing have been served on all PJM members, each entity listed on the official service list in Docket No. EL03–116, and each state electric utility regulatory commission in the PJM region.

Comment Date: October 30, 2003.

4. Nevada Power Company and Sierra Pacific Power Company v. Enron Power Marketing Inc.

[Docket No. EL04–01–000]

Take notice that on October 6, 2003, the Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific) (the Nevada Companies), tendered for filing a ''Complaint Requesting Fact Track Processing And Emergency Request For Order Preserving Jurisdiction'' against Enron Power Marketing Inc. (EPMI) or (Enron). The Complaint proceedings

have been docketed. The Nevada Companies ask the Commission to: (1) Rule that the Nevada Companies are not required to make any Termination Payments; (2) determine that it is neither equitable nor in the public interest for the Nevada Companies to be required to make termination payments even if Enron was within its rights to terminate; (3) issue an immediate order preserving the status quo by prohibiting Enron from enforcing the tariff provisions relating to termination until such time as the Commission determines the merits of the matters raised in the complaint; and (4) set the matter for expedited hearing under the Commission's fast track process.

The Nevada Companies ask that the date for answers, interventions, and comments be shortened as the Commission deems appropriate so as to allow the Commission to issue an interim order as of October 17, 2003.

The Nevada Companies state that copies of this Complaint were served, simultaneous with filing with the Commission, on Enron.

Comment Date: October 15, 2003.

5. Sierra Pacific Energy, LP

[Docket No. ER04–7–000]

Take notice that on October 1, 2003, Sierra Pacific Energy, LP (SPE LP), filed with the Commission a Notice of Succession pursuant to Sections 35.16 and 131.51 of the Commission's Regulations concerning its assumption of Sierra Pacific Energy, LLC's Market-Based Rate Tariff. SPE LC simultaneously submitted a tariff amendment removing references to authority to engage in ancillary services sales outside the CAISO markets.

Comment Date: October 22, 2003.

6. NRG Energy, Inc.

[Docket No. ES03–59–001]

Take notice that on October 7, 2003, NRG Energy, Inc. submitted a filing in response to a deficiency letter issued on October 2, 2003, by the Director of the Division of Tariffs and Market Development-Central, in the above-referenced docket.

Comment Date: October 17, 2003.

7. Mid-Atlantic Energy Company

[Docket No. ES03–60–000]

Take notice that on September 30, 2003, MidAmerican Energy Company (MidAmerican) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue and sell up to $455 million principal amount of bonds, notes, debentures, guarantees or other evidence of long-term indebtedness.

MidAmerican also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: October 27, 2003.

8. ISO New England, Inc.

[Docket No. ER04–23–000]

Take notice that on October 2, 2003, Devon Power LLC (Devon) tendered for filing an Amended Reliability Agreement between ISO New England, Inc., (ISO–NE) and Devon to become effective October 3, 2003.

Devon states that copies have been provided to ISO–NE, the affected state regulatory authorities and to all parties in Docket No. ER02–2463.

Comment Date: October 16, 2003.

9. William H. Bruett, Jr.

[Docket No. ID–2632–001]

Take notice that on September 15, 2003, William H. Bruett, Jr. submitted to the Commission an Abbreviated Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act and part 45 of the Commission(s Regulations.

Comment Date: October 17, 2003.

10. James S. Pignatelli, Michael J. DeConcini, Vincent Nitido, Jr., Kevin P. Larson, Karen G. Kissinger, Catherine A. Nichols, Linda H. Kennedy, and Gail K. Boswell

[Docket Nos. ID–3938–000, ID–3939–000, ID–3940–000, ID–3941–000, ID–3942–000, ID–3943–000, ID–3944–000, and ID–3945–000]

Take notice that, on September 9, 2003, the persons identified in the above-caption filed an informational report pursuant to the provisions of 18 CFR 45.9. According to the filing, these persons qualify for automatic authorization to hold interlocking positions pursuant to the provisions of section 45.9.

Comment Date: October 17, 2003.

Standard Pargraph

Any person desiring to intervene or to protest this filing should file 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 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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. E3–00085 Filed 10–21–03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–2–000, et al.]

GWF Energy LLC, et al.; Electric Rate and Corporate Filings

October 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. GWF Energy LLC

[Docket No. EC04–2–000]

Take notice that on October 3, 2003, GWF Energy LLC (GWF) tendered for filing an application under Section 203 of the Federal Power Act for approval of an intra-corporate reorganization. GWF requests Commission approval on an expedited basis and no later than November 1, 2003.

Comment Date: October 20, 2003.

2. MSW Merger LLC, United American Energy Corp., Heracles Power Partners, LLC, Atlas Energy, LLC

[Docket No. EC04–3–000]

Take notice that on October 3, 2003, MSW Merger LLC, as a proposed parent of United American Energy Corp. (UAE Corp.), Heracles Power Partners, LLC (Heracles), and Atlas Energy, LLC (Atlas) (jointly, the 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 (1) UAE Corp. will transfer to Heracles all of its interests in the entities which hold the general and limited partnership interests in UAE Mecklenburg Cogeneration LP, which owns an approximately 132 megawatt (MW) coal-fired cogeneration facility located in Clarksville, VA, and (2) UAE Corp. will transfer to Atlas of all of its indirect interests in (a) UAE Lowell Power LLC, which owns an approximately 82 MW gas-fired cogeneration facility located in Lowell, MA, and (b) Lowell Cogeneration Company Limited Partnership, which owns an approximately 29 MW gas-fired cogeneration facility located in Lowell, MA. Applicants state that they request privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112, Applicants also request that the Commission approve this transfer on an expedited basis and no later than November 15, 2003.

Comment Date: October 24, 2003.

3. United American Energy Holdings Corp., United American Energy Corp., MSW Merger LLC

[Docket No. EC04–4–000]

Take notice that on October 3, 2003 United American Energy Holdings Corp. (UAE Holdings), United American Energy Corp., and MSW Merger LLC (jointly, the 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 the Applicants would affect a change in control over the UAE Holdings through a merger.

The Applicants state that they are requesting confidential treatment pursuant to 18 CFR 388.112 for Exhibits I (the written instruments associated with the proposed transfer) and M (wholesale power sales contracts). The Applicants request that the Commission approve this transfer on an expedited basis and no later than November 15, 2003.

Comment Date: October 23, 2003.

4. PPL Martins Creek, LLC

[Docket No. EG01–127–000]

Take notice that on October 3, 2003, as supplemented on October 6, 2003, PPL Martins Creek, LLC tendered for filing an amendment to its Amended Application for Redetermination of Status as an Exempt Wholesale Generator filed on August 8, 2003.

PPL Martins Creek states it has served copies of its amendment on the parties listed on the Commission's official service list for this proceeding and on the Pennsylvania Public Utility Commission and the Securities and Exchange Commission.

Comment Date: November 4, 2003.

5. California Independent System Operator Corporation

[Docket No. ER01–889–015]

Take notice that on October 3, 2003, the California Independent System Operator Corporation (ISO), submitted a filing in compliance with the Commission's November 25, 2002 ''Order Setting Issues for Hearing, Denying Rehearing, Clarifying Creditworthiness Requirements, and Accepting in Part Compliance Filing,'' 101 FERC ¶ 61,241. ISO states that it has also served copies of this filing upon all entities that are on the official service list for the docket.

Comment Date: October 24, 2003.

6. Entergy Services, Inc.

[Docket Nos. ER01–1530–001 and ER02–1287–001]

Take notice that on February 28, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., submitted for filing an amendment to the informational filings originally submitted on March 13, 2001, in Docket No. ER01–1530–000, and on March 8, 2002, in Docket No. ER02–1287–000.

Comment Date: October 17, 2003.

7. Carolina Power & Light Company, Florida Power Corporation

[Docket Nos. ER01–1807–014 and ER01–2020–011]

Take notice that on October 3, 2003, Carolina Power & Light Company and Florida Power Corporation tendered for filing with the Commission, modifications to their Open Access Transmission Tariffs, Third Revised Volume No. 3 and Second Revised Volume No. 6, respectively, in compliance with the Commission's September 12, 2003 Order, 104 FERC ¶ 61,276 (2003).

Comment Date: October 24, 2003.

8. American Electric Power Service Corporation, Indiana Michigan Power Company

[Docket Nos. ER03–400–003 and ER03–403–005]

Take notice that on October 8, 2003, American Electric Power Service Corporation (American Electric) submitted for filing an Interconnection and Operation Agreement between Indiana Michigan Power Company (Indiana Michigan) and South Shore Power, L.L.C., in compliance with the Commission's September 9, 2003 Order on Compliance Filings and Rehearing, 104 FERC ¶ 61,243. American Electric states that the agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff, Third Revised Volume No. 6. Indiana Michigan requests an effective date of September 22, 2003.

American Electric states that copies of the filing have been served upon South Shore Power, L.L.C. and upon the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: October 29, 2003.

9. New York Independent System Operator Inc.

[Docket No. ER03–836–002]

Take notice that on October 8, 2003, New York Independent System Operator Inc. 9NYISO) tendered for filing a 10-Minute Non-Synchronous Reserve Market Report (Report). The Report is in response to Commission's July 1, 2003 Order Conditionally Accepting Proposed Tariff Revisions that was issued in Docket No. ER03–836–000.

Comment Date: October 29, 2003.

10. New England ISO, Exelon Framingham LLC, Exelon Mystic LLC, Exelon New Boston LLC, Exelon West Medway, Devon Power Company, et al.

[Docket Nos. ER03–959–002 and ER03–563–023]

Take notice that on October 3, 2003, ISO New England Inc. (ISO) submitted a Compliance Filing in the above-captioned proceeding as directed by the Commission in its September 23, 2003 Order on Request for Clarification and Accepting Initial Bid Cost Inputs Information for Filing, 104 FERC ¶ 61,312. The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: October 24, 2003.

11. PJM Interconnection, L.L.C.

[Docket No. ER03–1101–001]

Take notice that on October 7, 2003, PJM Interconnection, L.L.C. (PJM) in compliance with the Commission's September 22, 2003 Order, 104 FERC ¶ 61,309, filed revisions to PJM's credit policy, as set forth in Attachment Q to the PJM Open Access Transmission Tariff, to reduce the ''virtual bid screening'' multiplier from four days to two days, clarify the calculation of the nodal reference price, and modify and clarify the time when additional financial security becomes effective. PJM states that the filing also explains PJM's need to retain certain provisions, as required by the September 22 Order.

PJM states that the compliance tariff sheets have an effective date of September 20, 2003, as established by the September 22 Order.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: October 28, 2003.

12. NewCorp Resources Electric Cooperative, Inc.

[Docket No. ER03–1116–002]

Take notice that on October 3, 2003, NewCorp Resources Electric Cooperative, Inc. (NewCorp) submitted an amendment to their September 29, 2003 compliance filing in Docket No. ER03–1116–001. NewCorp states that they submitted a signed verification affidavit that was omitted in their filing on September 29, 2003. NewCorp also states that the signature pages of the two agreements submitted with the September 29, 2003 filing were not signed and the executed signature pages are being submitted as replacements for the sheets filed on September 29, 2003.

Comment Date: October 24, 2003.

13. Arizona Public Service Company

[Docket No. ER03–1310–001]

Take notice that on October 6, 2003, Arizona Public Service Company (APS) tendered for filing a revised Notice of Cancellation of the Wholesale Power Agreement (Agreement) between APS and Southern California Edison Company designated as FERC Rate Schedule No. 120, to allow a three-month extension in the term of the Agreement that was scheduled to terminate on December 31, 2003.

APS states that copies of this filing have been served on Southern California Edison, the California Public Utilities Commission, and the Arizona Corporation Commission.

Comment Date: October 27, 2003.

14. New York State Electric & Gas Corporation

[Docket Nos. ER04–9–000]

Take notice that on October 2, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission an executed Interconnection Agreement between NYSEG and Seneca Energy II, LLC (Seneca) that sets forth the terms and conditions governing the interconnection between Seneca's Ontario County Landfill generating facility in Ontario County, New York and NYSEG's transmission system.

NYSEG states that copies of this filing have been served upon Seneca, the New York State Public Service Commission, and the New York Independent System Operator, Inc.

Comment Date: October 23, 2003.

15. The Connecticut Light and Power Company

[Docket No. ER04–10–000]

Take notice that on October 2, 2003, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate The Connecticut Light and Power Company (CL&P), filed the executed Interconnection Agreement between CL&P and Hartford Steam Company (HSC), which has been designated as Original Service Agreement No. 100 (the Service Agreement) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 9. The Service Agreement is a new agreement establishing the terms and conditions under which CL&P will provide interconnection service to HSC's 7.5 megawatt electric generating facility located at Hartford Hospital in Hartford, Connecticut.

NUSCO states that a copy of this filing has been sent to HSC and that HSC fully consents to and supports this filing. NUSCO requests an effective date for the Service Agreement of October 3, 2003, and requests any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Comment Date: October 23, 2003.

16. PJM Interconnection, L.L.C.

[Docket No. ER04–11–000]

Take notice that on October 2, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Conectiv Energy Supply, Inc. and Delmarva Power & Light Company d/b/a Conectiv Power Delivery designated as Original Service Agreement No. 959, FERC Electric Tariff, Sixth Revised Volume No. 1. PJM requests a waiver of the Commission's 60-day notice requirement to permit a September 2, 2003 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: October 23, 2003.

17. PJM Interconnection, L.L.C.

[Docket No. ER04–12–000]

Take notice that on October 2, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Conectiv Energy Supply, Inc. and Delmarva Power & Light Company d/b/a Conectiv Power Delivery designated as Original Service Agreement No. 958, FERC Electric Tariff, Sixth Revised Volume No. 1. PJM requests a waiver of the Commission's 60-day notice requirement to permit a September 2, 2003 effective date for the ISA.

Copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: October 23, 2003.

18. Pacific Gas and Electric Company

[Docket No. ER04–13–000]

Take notice that on October 3, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreements (GSFAs) and Generator Interconnection Agreements (GIAs) between PG&E and the following parties: GWF Energy LLC-Henrietta (GWF Henrietta), GWF Energy LLC–Tracy (GWF Tracy), and Duke Energy Moss Landing, LLC (Duke Moss Landing) (collectively, Parties). PG&E has requested certain waivers.

PPG&E states that copies of the filing have been served upon GWF Henrietta, GWF Tracy, Duke Moss Landing, the California Independent System Operator Corporation and the CPUC.

Comment Date: October 24, 2003.

19. The Detroit Edison Company

[Docket No. ER04–14–000]

Take notice that on October 2, 2003, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824(d) (2000), and Sections 35.13 and 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13 and 35.15 (2003), The Detroit Edison Company: (i) filed its stand-alone Ancillary Services Tariff (AST), to become effective on December 1, 2003; and (ii) requested the termination of its current tariff rates for Ancillary Services on file with the Federal Energy Regulatory Commission in Docket No. OA96–78–000, to become effective simultaneously with the December 1, 2003 effective date of the AST.

Comment Date: October 23, 2003.

20. El Paso Electric Company

[Docket No. ER04–15–000]

Take notice that on October 2, 2003, El Paso Electric Company (El Paso) tendered for filing a First Revised Service Agreement with Public Service Company of New Mexico for Firm Transmission Service under El Paso's Open Access Transmission Tariff. EPE seeks an effective date of September 1, 2003.

Comment Date: October 23, 2003.

21. Quonset Point Cogen, L.P.

[Docket No. ER04–16–000]

Take notice that on October 3, 2003, Quonset Point Cogen, L.P. submitted pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a notice canceling Quonset Point Cogen, L.P.'s FERC Rate Schedule No.1. Quonset Point Cogen, L.P. requests that the cancellation be made effective September 23, 2003.

Comment Date: October 24, 2003.

22. Nicor Energy, L.L.C.

[Docket No. ER04–17–000]

Take notice that on October 3, 2003, Nicor Energy, L.L.C., (Nirocr) filed with the Commission pursuant to 18 CFR 35.15 a Notice of Cancellation of Nicor's Market-Based FERC Electric Rate Tariff and all rate schedules and/or service agreements thereunder effective October 1, 2003.

Comment Date: October 24, 2003.

23. New England Power Pool

[Docket No. ER04–18–000]

Take notice that on October 3, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Florida Power & Light Company (FP&L). The Participants Committee requests an October 1, 2003 effective date for commencement of participation in NEPOOL by FP&L.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: October 24, 2003.

24. New England Power Pool

[Docket No. ER04–19–000]

Take notice that on October 3, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include Bank of America, N.A. (BOA), Marquette Energy, L.L.C. (Marquette), and Ridgewood Rhode Island Generation, L.L.C. (Ridgewood); and (2) to terminate the membership of Hess Energy Power & Gas Company, LLC (HEPCO). The Participants Committee requests the following effective dates: August 1, 2003 for the termination of HEPCO; October 1, 2003 for the commencement of participation in NEPOOL by BOA and Marquette; and November 1, 2003 for the commencement of participation in NEPOOL by Ridgewood.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: October 24, 2003.

25. Florida Power Corporation

[Docket No. ER04–20–000]

Take notice that on October 3, 2003, Florida Power Corporation (FPC) re-filed the executed Shady Hills Facility Parallel Operation Agreement between FPC and Florida Power & Light Company which was previously accepted by the Commission's letter order issued May 8, 2003 in Docket No. ER03–620–000. FPC is requesting an effective date of December 18, 2002 for this Rate Schedule.

FPC states that a copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: October 24, 2003.

26. Maine Public Service Company

[Docket No. ER04–21–000]

Take notice that on October 3, 2003, Maine Public Service Company (MPS) submitted for filing a revised executed Interconnection Agreement Between MPS and WPS New England Generation, Inc. MPS requests an effective date of October 3, 2003 of the filing.

Comment Date: October 24, 2003.

27. Mid-Continent Energy Marketers Association

[Docket No. ER04–22–000]

Take notice that on October 3, 2003, the Mid-Continent Energy Marketers Association (MEMA) tendered for filing with the Federal Energy Regulatory Commission, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Commission's regulations, 18 CFR 35, its Capacity and Energy Tariff.

Comment Date: October 24, 2003.

28. Southern California Edison Company

[Docket No. ER04–24–000]

Take notice that on October 6, 2003, Southern California Edison Company (SCE) tendered for filing a Temporary Monitoring System Facilities and Operating Agreement (TMS Agreement) under SCE's Wholesale Distribution Access Tariff (WDAT) between SCE and the Whitewater Hill Wind Partners, LLC (Whitewater). SCE requests that the TMS Agreement become effective on December 5, 2003.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Whitewater.

Comment Date: October 27, 2003.

29. MidAmerican Energy Company

[Docket No. ER04–25–000]

Take notice that on October 6, 2003, MidAmerican Energy Company (MEC) tendered for filing Notices of Cancellation of (1) Service Agreement No. 2 under FERC Electric Tariff Original Volume No. 7, the November 11, 1987 Full Requirements Power Agreement (FRPA) between MEC and the City of Auburn, Iowa; and (2) FERC Electric Rate Schedule No. 94, the January 24, 1994 Electric Interchange and Interconnection Agreement (EIIA) between MEC and Indianola Municipal Utilities. MEC seeks cancellation of the FRPA effective January 10, 2004 and cancellation of the EIIA effective January 23, 2004.

Comment Date: October 27, 2003.

30. El Paso Electric Company

[Docket No. ER04–26–000]

Take notice that on October 6, 2003, El Paso Electric Company (EPE) tendered for filing revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff No. 1, to include rates for Real Power Loss service. EPE seeks an effective date of January 1, 1998 for certain tariff sheets and an effective date of December 6, 2003 for certain other tariff sheets.

Comment Date: October 27, 2003.

31. Western Electricity Coordinating Council

[Docket No. ER04–27–000]

Take notice that on October 7, 2003, the Western Electricity Coordinating Council (WECC) filed with the Commission a Fourth Amendment to the Reliability Criteria Agreement under the WECC's Reliability Management System. WECC states that the Fourth Amendment: (1) Clarifies terminology to reflect WECC's name change and other clarifying terminology changes; (2) defines ''Independent System Operator'' to clarify the reporting responsibility when such responsibly has been assigned to an Independent System Operator or a Regional Transmission Operator; (3) clarifies the term for assessing certain sanctions; (4) amends the reliability criteria applicable to generators with respect to Power System Stabilizers and Automatic Voltage Regulators; and (5) adds four additional reliability criteria. The WECC requests that the Commission make such amendment effective January 1, 2004.

Comment Date: October 28, 2003.

32. Southern California Edison Company

[Docket No. ER04–28–000]

Take notice, that on October 7, 2003, Southern California Edison Company (SCE) tendered for filing the Mountain View III Project Interconnection Facilities Agreement (Mountain View III Agreement) between SCE and Mountain View Power Partners III, LLC (Mountain View III). SCE states that the purpose of the Mountain View III Agreement is to interconnect the Mountain View III Project to the facilities recently constructed to accommodate the interconnection of the Mountain View I Project. SCE requests that the Agreement become effective on October 8, 2003.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Mountain View Power Partners III, LLC.

Comment Date: October 28, 2003.

33. Utility Management Corporation

[Docket No. ER04–30–000]

Take notice that on October 8, 2003, Utility Management Corporation (Utility Management) tendered for filing a Notice of Cancellation of it Market-Based Rate Tariff accepted by the Commission in Docket No. ER96–1144–000.

Comment Date: October 29, 2003.

34. Epic Merchant Energy, L.P.

[Docket No. ER04–31–000]

Take notice that on October 8, 2003, Epic Merchant Energy, L.P., tendered for filing, under Section 205 of the Federal Power Act, a request for authorization to sell electricity at market-based rates under its proposed market-based tariff.

Comment Date: October 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file 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 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. E3–00084 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–1–000, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Filings

October 9, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSI Energy, Inc.

[Docket No. EC04–1–000]

Take notice that on October 2, 2003, PSI Energy, Inc. tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act, 16 U.S.C. 824b, for PSI Energy, Inc., to engage in a transfer of limited substation assets with Hoosier Energy Rural Electric Cooperative, Inc. PSI Energy, Inc., states that copies of this filing have been served on the Indiana Utility Regulatory Commission.

Comment Date: October 23, 2003.

2. AmerenEnergy Resources Generating Company

[Docket No. EG02–126–000]

Take notice that on April 29, 2003, Central Illinois Generation, Inc. now known as AmerenEnergy Resources Generating Company (AERG), tendered for filing an application for determination of exempt wholesale generator (EWG) status pursuant to 18 CFR 365 of the Commission's regulations. AERG states that the facilities were to be transferred to AERG from its parent company, Central Illinois Light Company as approved by the Commission on May 28, 2002 in Docket EC02–66–000.

AERG states that the transfer of the generating facilities described in Docket No. EG02–126–000 is expected to occur sometime after the date of AERG's filing. However, pursuant to 18 CFR 365.8, AERG also notifies the Commission that effective as of October 2, 2003 it no longer seeks to maintain EWG status.

Comment Date: October 30, 2003.

3. ISO New England Inc.

[Docket No. ER02–2153–005]

Take notice that on October 1, 2003, ISO New England Inc. (ISO), submitted a compliance report in this proceeding.

ISO states that copies of said filing have been served upon all parties to this proceeding and the New England utility regulatory agencies, and electronically upon the New England Power Pool participants.

Comment Date: October 22, 2003.

4. Duke Energy South Bay, LLC

[Docket No. ER03–117–000]

Take notice that on October 2, 2002, Duke Energy South Bay, LLC (DESB) pursuant to 18 CFR 35.13 of the Commission regulations, tendered for filing certain revisions to Rate Schedules A and B of DESB's Reliability Must Run (RMR) Agreement with the California Independent System Operator (CAISO) for contract year 2003. This filing is the result of an Offer of Settlement with respect to all issues in Docket No. ER03–117–000 relating to DESB's 2003 Annual Fixed Revenue Requirement (AFRR) under its RMR Agreement with CAISO which was filed concurrently in this docket.

DESB requests an effective date of January 1, 2003 for these revisions, unless otherwise noted. DESB states that copies of the filing have been served upon the CAISO, San Diego Gas & Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: October 23, 2003.

5. Tampa Electric Company

[Docket No. ER03–1384–001]

Take notice that Tampa Electric Company (Tampa Electric) tendered for filing on September 25, 2003, amendments to Appendices C and D of its Market-Based Sales Tariff. On October 2, 2003, Tampa Electric submitted an additional amendment. The amendments lower the credit rating thresholds in Appendix C and delete Appendix D, which contains a statement of rates for services under Tampa Electric's open access transmission tariff. Tampa Electric proposes that the amendments be made effective on September 25, 2003.

Copies of the filing have been served on the customers under Tampa Electric's Market-Based Sales Tariff and the Florida Public Service Commission.

Comment Date: October 23, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER04–4–000]

Take notice that on October 1, 2003, the New York Independent System Operator, Inc. (NYISO), submitted conforming changes to the Tables of Contents of its Market Administration and Control Area Services Tariff and to its Open Access Transmission Tariff. The NYISO requests an October 2, 2003 effective date. NYISO states that the revisions to each Tariff's Table of Contents are made to conform them to changes in the substantive content of the Tariffs that have been previously approved by the Commission, or are currently pending with the Commission.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Services Tariff, the New York State Public Service Commission, and the electric regulatory agencies in New Jersey and Pennsylvania.

Comment Date: October 22, 2003.

7. Northern Indiana Public Service Company

[Docket No. ER04–6–000]

Take notice that on October 1, 2003, Northern Indiana Public Service Company (NIPSCO) tendered for filing two Notices of Cancellation of NIPSCO's FERC Electric Service Tariff, Rate Schedule VA 20, Service Agreement No. 54 under FERC Electric Tariff, Original Volume No. 5 and Service Agreement No. 72 under FERC Electric Tariff, Third Revised Volume No. 2.

Comment Date: October 22, 2003.

8. AmerenEnergy Medina Valley Cogen, L.L.C.

[Docket No. ER04–8–000]

Take notice that on October 1, 2003, AmerenEnergy Medina Valley Cogen, L.L.C. (AEMVC) submitted for filing a Notice of Succession, pursuant to 18 CFR Sections 35.16 and 131.51 of the Commission's regulations. AES Medina Valley Cogen, L.L.C. (AESM) changed its name to AEMVC. AEMVC states that it adopts, ratifies, and makes own in every aspect the FERC Electric Rate Schedule No. 1 of AESM, all rate schedules filed by any party to which AESM has been a party, and the agreements entered into by AESM thereunder.

Comment Date: October 22, 2003.

9. Western Interconnection, L.L.C.

[Docket No. ES03–61–000]

Take notice that on September 30, 2003, Western Interconnection, L.L.C. (WI, L.L.C.) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue a secured long-term note for $100 million.

Comment Date: October 30, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file 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 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. E3–00090 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–2–000, et al.]

Sacramento Municipal Utility District, et al.; Electric Rate and Corporate Filings

October 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sacramento Municipal Utility District, Complainant v. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company, Respondents

[Docket No. EL04–2–000]

Take notice that on October 8, 2003, pursuant to Section 206 of the Federal Power Act and Rule 206, the Sacramento Municipal Utility District (SMUD) filed a complaint (Complaint) against Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (California Companies), challenging the refusal of the California Companies to honor SMUD's exercise of its right of first refusal to extend the term of service under an August 1, 1967 transmission contract between the parties.

Comment Date: November 7, 2003.

2. Mirant Kendall, LLC

[Docket Nos. ER03–998–002]

Take notice that on September 26, 2003, ISO New England Inc. (ISO) tendered an Errata Filing to correct a Compliance Filing submitted on September 2, 2003 in the above captioned dockets. ISO states that copies of the Errata Filing have been served upon the parties.

Comment Date: October 20, 2003.

3. Xcel Energy Services, Inc.

[Docket No. ER04–2–000]

Take notice that on October 1, 2003, Xcel Energy Services, Inc. (XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing Experimental Sales Riders between SPS and Central Valley Electric Cooperative, Inc.; Lyntegar Electric Cooperative, Inc.; Lea County Electric Cooperative, Inc,: Farmers' Electric Cooperative, Inc.; Roosevelt County Electric Cooperative, Inc.; and Cap Rock Energy Corporation.

Xcel requests that these agreements become effective on October 1, 2003.

Comment Date: October 22, 2003.

4. Florida Power Corporation

[Docket No. ER04–3–000]

Take notice that on October 1, 2003, Florida Power Corporation, doing business as Progress Energy Florida, Inc., (Florida Power), tendered for filing an amendment adding an additional service schedule for negotiated interchange service to its First Revised Rate Schedule FERC No. 80, a contract for interchange service with Tampa Electric Company (Tampa Electric)

dated July 21, 1977. Florida Power requests an effective date for the filing of October 2, 2003.

Florida Power states that copies of the filing were served on Tampa Electric and the Florida Public Service Commission.

Comment Date: October 22, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file 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 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. E3–00083 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637–022—WA]

Public Utility District No.1 of Chelan County; Notice of Availability of Final Environmental Assessment

October 10, 2003.

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 F.R. 47897), Office of Energy Projects staff have reviewed the application for a new license for the Lake Chelan Hydroelectric Project, an existing, operating facility located on the Chelan River near the City of Chelan, Washington. The 48-megawatt project occupies land managed by the U.S. Forest Service and the National Park Service. In the Final Environmental Assessment (FEA), the staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

We are aware that Chelan PUD and a number of parties continue to pursue a settlement in this case. If a settlement is filed, it will be noticed for public comment. Whether the FEA is supplemented will be based on the content of any filed settlement and subsequent comments we may receive.

The FEA can be viewed 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00097 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–428]

Duke Energy Corporation; Notice of Availability of Environmental Assessment

October 15, 2003.

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 F.R. 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application requesting Commission approval for a revised Shoreline Management Plan (SMP). The proposed SMP is intended to supercede the approved SMP including the classification maps. The EA addresses proposed revisions to SMP for the Catawba-Wateree Project. The SMP and maps address the allowable uses of 1,727 miles of shoreline for the 11 project reservoirs located in North Carolina and South Carolina.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Granting and Modifying Revised Shoreline Management Plan'' (which is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676, or (202) 502–8659 (for TTY).

For further information, contact Brian Romanek at 202–502–6175.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00087 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 14, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2233–044.

c. *Date Filed:* October 7, 2003.

d. *Applicants:* Portland General Electric Company (PGE) and Blue Heron Paper Company (BHPC).

e. *Name and Location of Project:* The Willamette Falls Hydroelectric Project is on the Willamette River in Clackamas County, Oregon. The project does not occupy Federal or tribal land.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* Michael A. Siebers, Blue Heron Paper Company, 419 Main Street, Oregon City, OR 97045, (503) 650–4239, J. Mark Morford, Stoel

Rives LLP, Suite 2300, 900 SW 5th Avenue, Portland, OR 97204–1278, and Julie A. Keil, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204, (503) 464–8864.

h. *FERC Contact:* Regina Saizan, (202) 502–8765.

i. *Deadline for filing comments, protests, and motions to intervene:* October 31, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–2233–044) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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 documents on that resource agency.

j. *Description of Proposal:* The applicants request Commission approval of the transfer of the project license from PGE and BHPC to PGE. Applicants state that PGE purchased assets, including assets related to the project, from BHPC pursuant to an agreement dated July 29, 2003, and that the transaction closed on August 15, 2003.

The transfer application was filed within five years of the expiration of the license for the project, which is the subject of a pending relicense application in Project No. 2233–043. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

k. Copies of this filing are on file with the Commission and are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2233) to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnLineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number 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. E3–00072 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

October 15, 2003.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–289–013.

c. *Date filed:* October 7, 2003.

d. *Applicant:* Louisville Gas and Electric Company (LG&E).

e. *Name of Project:* Ohio Falls Hydroelectric Station.

f. *Location:* On the Ohio River, in Jefferson County, Kentucky. This project is located at the U.S. Army Corps of Engineer's McAlpine Locks and Dam Project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Linda S. Portasik, Senior Corporate Attorney, Louisville Gas and Electric Company, 220 West Main Street, Louisville, Kentucky 40202, (502) 627–2557.

i. *FERC Contact:* John Costello, *john.costello@ferc.gov* (202) 502–6119.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* December 5, 2003.

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.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Ohio Falls Hydroelectric Station consists of the following existing facilities: (a) A concrete powerhouse containing eight-10,040 kW generating units, located at the U.S. Army Corps of Engineer's McAlpine Locks and Dam Project; (b) a concrete headworks section, 632 feet long and 2 feet wide, built integrally with the powerhouse; (c) an office and electric gallery building; (d) a 69 kV transmission line designated as line 6608 to the Canal substation; (e) an access road, (f) a 266.6-foot long swing bridge over McAlpine Locks for access; (g) one half mile of railroad tracks; and (h) appurtenant facilities. The project facilities are owned by LG&E.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERC Online Support@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. You may also 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. To view upcoming FERC events, go to *www.ferc.gov* and click on ''View Entire Calendar.''

q. With this notice, we are initiating consultation with the *Kentucky State Historic Preservation Officer (SHPO)*, as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

r. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in early 2005.

Issue Acceptance or Deficiency Letter—February 2004..

Issue Scoping Document—July 2004

Notice that application is ready for environmental analysis—November 2004

Notice of the availability of the EA—February 2005

Ready for Commission decision on the application—October 2005

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the ''notice of ready for environmental analysis.''

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00088 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–16–000]

Integrated Licensing Process Outreach; Notice of Public Outreach Meeting on the Integrated Licensing Process

October 15, 2003.

Commission staff from the Office of Energy Projects will hold a public Outreach Meeting on the new Integrated Licensing Process at the location and time listed below. The purpose of the Outreach program is to familiarize licensees, federal, state, and other government agencies, Indian tribes, nongovernmental organizations, and other interested parties with the new Integrated Licensing Process set forth by Order Number 2002, issued on July 23, 2003.

Location	Date/time
Washington, D.C., Federal Energy Regulatory Commission 888 First Street, NE., Washington DC 20426.	November 5, 2003, 1 p.m. to 5 p.m.

All interested parties are invited to attend. If you plan to attend, please contact Ken Hogan at 202–502–8434 or David Turner at (202) 502–6091. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00086 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–503–002 and RP01–503–003]

Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

October 10, 2003.

Take notice that an informal settlement conference will be held in the above-referenced proceedings immediately after the prehearing conference at 10 a.m. on October 16, 2003, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Marc G. Denkinger (202) 502–8662 or Arnold H. Meltz (202) 502–8649.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00098 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–7–002]

Natural Gas Price Formation; Notice of Staff Workshop on Market Activity and Price Indicators

October 15, 2003.

The Commission said in its Policy Statement on Natural Gas and Electric Price Indices, Docket No. PL03–3–000,

Paragraph 41 that price indices used in natural gas pipeline tariffs must ''reflect adequate liquidity'' at the point referenced in the tariff. Furthermore, in Northern Natural Gas Company, Docket No. RP03–533–000 and in Natural Gas Pipeline Company of America, Docket No. RP99–176–089, the Commission directed its Staff to assess whether the price indices proposed to be used in those pipelines' tariffs reflect a level of liquidity that would ensure reliability.

In order to respond to the Commission, and to develop a basis for evaluating adequacy of liquidity in future pipeline tariff filings, staff will seek information as to what factors must be considered to evaluate available data sources of market activity at reference points. To get a better understanding of standard measurements of market activity and the reliability of price indicators, staff is holding a workshop from 10 a.m. to 5 p.m. on Tuesday, November 4, 2003, at the Federal Energy Regulatory Commission, 888 First Street, NE., in Washington, DC.

The previously held conferences and workshop in this docket addressed price indices and the reporting process, *i.e.*, the mechanisms for reporting and creating price indices. In this workshop, we intend to focus on characteristics of the underlying markets that support price discovery. How should the Commission decide if a particular market (or index point) represents sufficient activity to provide a reliable price? How can and should minimum levels of market activity required to support a reliable index be measured? What alternatives can be used in the event the underlying data is deemed inadequate?

The workshop will be in roundtable format and we request that the discussion be candid, factual and practical. We strongly encourage anyone with direct knowledge of evaluating liquidity and measuring market activity to participate actively in the workshop. This would include those who trade, manage risk, purchase and sell gas and electricity, report prices, and any others who use energy market information. A supplemental notice will be issued to provide key discussion questions on the issues to be addressed at the workshop.

The workshop is open to the public, and we would like to hear from as many as possible on these important price formation issues. It would be helpful, however, if people with a strong interest in speaking call in or e-mail their desire to participate, including name, company represented and involvement in energy market activities and price indicators, as well as the topic to be addressed. For those unable to attend in person, teleconferencing will be available during the workshop. Details and dial-in instructions will be included in the supplemental notice.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives them. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For additional information please contact Jolanka Fisher, 202–502–8863 or by e-mail at *Jolanka.Fisher@ferc.gov.*

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00089 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–489–000]

Vector Pipeline Company; Notice of Informal Settlement Conference

October 10, 2003.

Take notice that an information settlement conference will be held on October 21 and 22, 2003, at 10 a.m. at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement in the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Thomas Burgess (202–502–6058), e-mail *Thomas.Burgess@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00091 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

October 15, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 22, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note—** Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone: (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

842nd Meeting, October 22, 2003; Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket# PL03–3, 000, Price Discovery In Natural Gas and Electric Market

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER03–323, 001, Midwest Independent Transmission System Operator, Inc.
Other#S ER03–323, 004, Midwest Independent Transmission System Operator, Inc.

E–2.
Docket# ER03–1118, 000, Midwest Independent Transmission System Operator, Inc.

E–3.
Docket# ER02–1656, 015, California Independent System Operator Corporation
Other#S EL01–68, 028, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–4.
Docket# RT01–2, 009, PJM Interconnection L.L.C.

Other#S RT01–2, 010, PJM Interconnection L.L.C.: Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, And UGI Utilities Inc.
ER03–738, 001, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company and West Penn Power Company, all d/b/a Allegheny Power Atlantic City Electric Company, Delmarva Power & Light Company, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric and Gas Company, Rockland Electric Company and UGI Utilities, Inc.
E–5.
Docket# ER03–1247, 000, Northeast Utilities Service Company
E–6.
Docket# ER03–1243, 000, Southern California Edison Company
E–7. Omitted
E–8.
Docket# ER03–1274, 000, Boston Edison Company
E–9.
Docket# ER03–1271, 000, Aquila, Inc.
E–10.
Docket# ER03–1307, 000, Central Maine Power Company
E–11.
Docket# EC03–122, 000, Sithe Energies, Inc., Apollo Energy, LLC, Exelon (Fossil) Holdings, Inc., Exelon Power Holdings, LP, Exelon SHC, Inc., ExRes SHC, Inc., Marubeni MS Power, Inc., Marubeni American Corporation, National Energy Development Inc., and RCSE, LLC
E–12. Omitted
E–13.
Docket# EC03–131, 000, Oklahoma Gas & Electric Company and NRG McClain LLC
E–14.
Docket# ER03–1046, 000, California Independent System Operator Corporation
E–15. Omitted
E–16.
Docket# ER02–2330, 010, New England Power Pool
Other#S ER02–2330, 011, New England Power Pool
ER02–2330, 012, New England Power Pool
ER02–2330, 014, New England Power Pool
E–17.
Docket# ER02–2480, 002, Duke Energy Corporation
Other#S EL02–118, 000, GenPower Anderson, LLC, FPL Energy Anderson, LLC, and Mountain Creek 2001 Trust v. Duke Energy Corporation and Duke Electric Transmission
E–18.
Docket# ER03–323, 002, Midwest Independent Transmission System Operator, Inc.
Other#S ER03–323, 003, Midwest Independent Transmission System Operator, Inc.
E–19. Omitted
E–20.
Docket# EF02–4011, 000, United States Department of Energy—Southwestern Power Administration (Integrated System)
E–21.
Omitted
E–22.
Docket# ER03–175, 003, Termoelectrica U.S., LLC
E–23.
Omitted
E–24.
Docket# AC03–20, 001, American Electric Power Service Corporation
E–25.
Omitted
E–26.
Docket# ER03–583, 003, Entergy Services, Inc. and EWO Marketing, LP
Other#s ER03–681, 002, Entergy Services, Inc. and Entergy Power, Inc. ER03–682, 003, Entergy Services, Inc. and Entergy Power, Inc. ER03–744, 002, Entergy Services, Inc. and Entergy Louisiana, Inc.
E–27.
Omitted
E–28.
Docket# EL99–44, 006, *Arizona Public Service Company* v. *Idaho Power Company*
Other#s EL99–44, 007, *Arizona Public Service Company* v. *Idaho Power Company*
E–29.
Docket# ER03–563, 020, Connecticut Jet Power LLC
E–30.
Omitted
E–31.
Docket# ER03–647, 001, New York Independent System Operator, Inc.
Other#s ER03–647, 002, New York Independent System Operator, Inc. ER03–1296, 000, New York Independent System Operator, Inc.
E–32.
Docket# RM00–7, 010, Revision of Annual Charges Assessed to Public Utilities (PJM Interconnection, L.L.C.)
E–33.
Omitted
E–34.
Docket# EL02–105, 002, UBS AG
Other#s EC02–91, 002, UBS AG EL02–130, 002, Bank of America, N.A. EC02–120, 002, Bank of America, N.A.
E–35.
Docket# EL02–74, 002, Colton Power L.P. and the City of Colton, California v. Southern California Edison Company
E–36.
Docket# ER03–624, 001, Calpine Construction Finance Company, L.P.
Other#s ER03–624, 002, Calpine Construction Finance Company, L.P. ER03–1305, 000, Calpine Energy Services, L.P.
E–37.
Docket# EG03–96, 000, Texas Genco, LP
E–38.
Docket# NJ02–3, 000, United States Department of Energy—Bonneville Power Administration
E–39.
Docket# EL03–211, 000, Calpine Newark, LLC
Other#s QF86–891, 005, Calpine Newark, LLC
E–40.
Docket# EL03–206, 000, Santa Rosa Energy LLC
Other#s QF97–138, 003, Santa Rosa Energy LLC
E–41.
Docket# EL03–223, 000, California Power Exchange Corporation
E–42.
Docket# EL03–216, 000, Northeast Utilities Service Company and Select Energy, Inc. v. ISO New England Inc. and New England Power Pool
E–43.
Omitted
E–44.
Docket# EL98–6, 001, Old Dominion Electric Cooperative v. Public Service Electric and Gas Company
E–45.
Docket# ER01–3001, 006, New York Independent System Operator, Inc.
E–46.
Docket# ER03–727, 001, Midwest Independent Transmission System Operator, Inc.
E–47.
Docket# ER03–59, 001, Entergy Services, Inc.
Other#s ER03–59, 002, Entergy Services, Inc. ER03–1273, 000, Entergy Services, Inc.
E–48.
Docket# ER01–2658, 000, American Electric Power Service Corp.
Other#s EL00–79, 000, *Mid-Tex G&T Electric Cooperative, Inc., et al.* v. *West Texas Utilities Company* EL01–113, 000, *Mid-Tex G&T Electric Cooperative, Inc., et al.* v. *West Texas Utilities Company* EC01–130, 000, American Electric Power Service Corp. ER01–2658, 001, American Electric Power Service Corp. ER01–2668, 000, American Electric Power Company, Inc. ER01–2977, 000, American Electric Power Service Corp. ER01–2977, 001, American Electric Power Service Corp. ER01–2980, 000, American Electric Power Service Corp. ER01–2980, 001, American Electric Power Service Corp. EL02–24, 000, *Mid-Tex G&T Electric Cooperative, Inc., et al.* v. *West Texas Utilities Company* ER02–371, 000, American Electric Power Service Corp. ER02–371, 001, American Electric Power Service Corp. ER02–371, 002, American Electric Power Service Corp. ER02–602, 000, American Electric Power Service Corp. ER02–602, 001, American Electric Power Service Corp. ER02–1216, 000, American Electric Power Service Corp. ER02–1410, 000, West Texas Utilities Company
E–49.
Docket# ER02–2119, 000, Southern California Edison Company

E–50.
Docket# EL03–207, 001, *Outback Power Marketing Inc., SESCO Enterprises L.L.C., and Black Oak Energy, L.L.C.* v. *PJM Interconnection, L.L.C.*
Other# EL03–207, 002, *Outback Power Marketing Inc., SESCO Enterprises L.L.C., and Black Oak Energy, L.L.C.* v. *PJM Interconnection, L.L.C.*
E–51.
Omitted
E–52.
Docket# ER03–1276, 000, FirstEnergy Service Company
E–53.
Docket# EL02–113, 002, El Paso Electric Company
E–54.
Docket# ER03–31, 000, United Illuminating Company
Other#s ER03–31, 001, United Illuminating Company
E–55.
Omitted
E–56.
Docket# ER03–1311, 000, Chesapeake Transmission, LLC

Miscellaneous Agenda

M–1.
Docket# RM02–14, 000, Regulation of Cash Management Practices
Other#s RM02–14, 001, Regulation of Cash Management Practices

Markets, Tariffs and Rates—Gas

G–1.
Omitted
G–2.
Docket# RP03–589, 000, Iroquois Gas Transmission System, L.P.
G–3.
Omitted
G–4.
Omitted
G–5.
Omitted
G–6.
Omitted
G–7.
Docket# RP03–588, 000, Texas Gas Transmission, LLC
G–8.
Docket# RP96–320, 061, Gulf South Pipeline Company, LP.
G–9.
Omitted
G–10.
Docket# RP03–195, 001, Dominion Transmission, Inc.
G–11.
Docket# RP03–409, 000, Gulfstream Natural Gas System, L.L.C.
G–12.
Docket# RP01–411, 001, Kern River Gas Transmission Company
G–13.
Docket# RP00–329, 004, Great Lakes Gas Transmission Limited Partnership
G–14.
Docket# RP00–327, 005, Columbia Gas Transmission Corporation
Other#s RP00–604, 005, Columbia Gas Transmission Corporation
G–15.
Docket# RP02–551, 001, Dominion Transmission, Inc.
G–16.
Omitted
G–17.
Docket# RP00–336, 009, El Paso Natural Gas Company
Other#s RP00–336, 008, El Paso Natural Gas Company
G–18.
Omitted
G–19.
Docket# RP99–301, 079, ANR Pipeline Company
Other#s GT01–25, 005, ANR Pipeline Company
G–20.
Docket# GT02–35, 006, Tennessee Gas Pipeline Company
Other#s GT02–35, 005, Tennessee Gas Pipeline Company
G–21.
Docket# RP03–544, 002, Texas Gas Transmission, LLC
G–22.
Docket# RP98–40, 033, Panhandle Eastern Pipe Line Company
Other#s SA99–1, 002, Burlington Resources Oil & Gas Company, LP
G–23.
Docket# RP03–551, 000, *Wisconsin Gas Company* v. *Viking Gas Transmission Company*
G–24.
Docket# OR03–5, 000, *Chevron Products Company* v. *SFFP, L.P.*
G–25.
Docket# RP03–612, 000, Questar Southern Trails Pipeline Company

Energy Projects—Hydro

H–1.
Docket# P–2000, 036, New York Power Authority
H–2.
Docket# P–2145, 054, Public Utility District No. 1 of Chelan County, Washington
Other#s P–943, 082, Public Utility District No. 1 of Chelan County, Washington
H–3.
Docket# P–2687, 024, Pacific Gas and Electric Company
H–4.
Docket# P–12018, 001, San Carlos Irrigation and Drainage District
H–5.
Docket# P–10455, 026, JDJ Energy Company
H–6.
Docket# P–6939, 107, City of Jackson, Ohio and Certain Ohio Municipalities
H–7.
Docket# P–2436, 185, Consumers Energy Company
Other#s P–2447, 153, Consumers Energy Company P–2448, 158, Consumers Energy Company P–2449, 137, Consumers Energy Company P–2450, 133, Consumers Energy Company P–2451, 136, Consumers Energy Company P–2452, 144, Consumers Energy Company P–2453, 163, Consumers Energy Company P–2468, 140, Consumers Energy Company P–2580, 183, Consumers Energy Company P–2599, 151, Consumers Energy Company
H–8.
Docket# P–1494, 232, Grand River Dam Authority

Energy Projects—Certificates

C–1.
Docket# CP03–301, 000, Colorado Interstate Gas Company
Other#s CP03–302, 000, Cheyenne Plains Gas Pipeline Company CP03–303, 000, Cheyenne Plains Gas Pipeline Company CP03–304, 000, Cheyenne Plains Gas Pipeline Company
C–2.
Docket# CP03–296, 000, NGO Transmission, Inc.
Other#s CP03–298, 000, NGO Transmission, Inc.
C–3.
Docket# CP02–60, 003, CMS Trunkline LNG Company, LLC
C–4.
Omitted
C–5.
Docket# CP02–233, 001, Equitrans, L.P. and Carnegie Interstate Pipeline Company
C–6.
Docket# CP03–11, 001, Jupiter Energy Corporation
C–7.
Docket# CP01–415, 010, East Tennessee Natural Gas Company
Other#s CP01–415, 011, East Tennessee Natural Gas Company CP01–415, 012, East Tennessee Natural Gas Company CP01–415, 013, East Tennessee Natural Gas Company CP01–415, 015, East Tennessee Natural Gas Company

Magalie R. Salas,

Secretary.

[FR Doc. 03–26734 Filed 10–20–03; 10:46 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

October 16, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 23, 2003, 9:30 a.m.

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone: (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on October 23, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–26735 Filed 10–20–03; 10:46 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

October 14, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are 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 (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited:		
1. EL03–132–000	9–25–03	J. Wayne Leonard.
2. ER03–583–000	9–25–03	J. Wayne Leonard.
3. Project No. 2342–000	9–29–03	Barb Varellas.
4. Project No. 2342–000	9–29–03	Matthew R. Courter.
5. Project No. 2342–000	9–29–03	David Quintana.
Exempt:		
1. CP03–302–000	9–25–03	Jerry Moran.
2. Project No. 2232–407	9–31–03	Douglas O. Bean.
3. Project Nos. 2000–000, 2216–000	10–3–03	Don Humason, Jr.
4. Project Nos. 2000–000, 2216–000	10–6–03	Cory Atkins.
5. CP03–75–000	10–9–03	J.H. Rumpp.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00073 Filed 10–21–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0091; FRL–7577–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA ICR Number 0783.45, OMB Control Number 2060–0104

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to amend an existing approved collection. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 21, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0091 (legacy docket number A–2000–49), to (1) EPA online using EDOCKET (our preferred method), by e-mail to Holly Pugliese at *pugliese.holly@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, Telephone 734–214–4288, Internet e-mail ''pugliese.holly@epa.gov.''

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 8, 2001 (66 FR 30830), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on this ICR.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0091, which is available for public viewing at the 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 Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1472. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Vehicle Engine Service Information Amending Motor Vehicle Emission Certification and Fuel Economy Compliance.

Abstract: Under Title II of the Clean Air Act, (42 U.S.C. 7521 *et seq.*), EPA is charged with requiring the manufacturers of vehicles and engines to make available emissions-related repair information to aftermarket service providers. To improve timely access to this information, EPA is requiring that vehicle and engine manufacturers provide access to the required emissions-related information in full-text via the World Wide Web. To ensure compliance with these statutes, EPA is requiring that manufacturers measure the performance of their Web sites as outlined in preamble to the Final Rule making and report this information to EPA in electronic format on an annual basis. EPA will review the information to determine that the manufacturers subject to the proposed Web site requirements have developed Web sites with sufficient infrastructure to support potentially thousands of aftermarket service providers at any given time.

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. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 100 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collection, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Respondents/Affected Entities: The respondents are motor vehicle manufacturers, SIC code 3711.

Estimated Number of Respondents: 45.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 4,500.

Estimated Total Annual Cost: $265,500 includes $72,000 annualized capital costs.

Changes in the Estimates: There is an increase of 4500 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the fact that this is a new reporting requirement for manufacturers and the burden estimates are being revised accordingly.

Dated: October 15, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–26666 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7577–3]

Science Advisory Board Staff Office: Clean Air Scientific Advisory Committee (CASAC) Notification of Advisory Committee Meeting of the CASAC Particulate Matter Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office, announces a public

meeting of the Clean Air Scientific Advisory Committee's (CASAC) Particulate Matter (PM) Review Panel to: discuss follow-on matters related to its ongoing peer review of the *EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft);* and conduct a peer review of the *Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (OAQPS Staff Paper—First Draft*) and a related draft technical report, *Particulate Matter Health Risk Assessment for Selected Urban Areas (Draft Report*).

DATES: The meeting will be held November 12 and 13, 2003, from 8:30 a.m. to 5:30 p.m. (Eastern Time) on both days.

ADDRESSES: The meeting will take place in Research Triangle Park (RTP), North Carolina, or the immediate vicinity. Once the meeting location has been determined, and in no case later than five business days prior to the meeting, this information will be posted on the SAB Web site at: *http://www.epa.gov/sab.* A publicly-accessible teleconference line will be available for the entire meeting.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the teleconference call-in numbers and access codes should contact Ms. Delores Darden, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2282, or e-mail: *darden.delores@epa.gov,* or Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526, or e-mail: *friedman.sandra@epa.gov.*

Any member of the public who wants further information concerning this meeting, or who wishes to submit written or brief oral comments (five minutes or less) must contact Mr. Fred Butterfield, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 564–4561; fax: (202) 501–0582; or e-mail: *butterfield.fred@epa.gov.* Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Written comments (preferably via e-mail) should be sent to Mr. Butterfield by the same deadline so that the comments can be provided to the CASAC PM Review Panel prior to the meeting. *See* additional instructions in the section below entitled, ''Providing Oral or Written Comments at SAB Meetings.'' General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary: The Clean Air Scientific Advisory Committee, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC PM Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The PM Review Panel is charged with: (1) Discussing follow-on matters related to the Panel's ongoing peer review of the *EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft*); and (2) conducting a peer review of the *Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (OAQPS Staff Paper—First Draft*) and a related draft technical report, *Particulate Matter Health Risk Assessment for Selected Urban Areas (Draft Report*).

Background: EPA is in the process of updating, and revising where appropriate, the Air Quality Criteria Document (AQCD) for PM as issued in 1996. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria and the NAAQS for ''criteria'' air pollutants such as PM. On June 30, 2003, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, made available for public review and comment a Fourth External Review Draft of a revised document, *EPA Air Quality Criteria for Particulate Matter.* Under CAA sections 108 and 109, the purpose of the revised document is to provide an assessment of the latest scientific information on the effects of airborne PM on the public health and welfare, for use in EPA's current review of the NAAQS for PM. Detailed summary information on the history of the current draft AQCD for PM is contained in a previous EPA **Federal Register** notice (68 FR 36985, June 20, 2003). The *EPA Air Quality Criteria for Particulate Matter (Fourth External Review Draft*) can be viewed and downloaded from the NCEA Web site at: *http://www.epa.gov/ncea.* Any questions concerning the draft AQCD for PM should be directed to Dr. Robert Elias, NCEA-RTP, at telephone: (919) 541–4167; or e-mail: *elias.robert@epa.gov.* The first element of the charge to the CASAC PM Review Panel contained in the ''Summary'' section above is a follow-on to the Panel's review of the *EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft*). This review first took place in a public meeting held in RTP on August 25–26, 2003 (68 FR 47060, August 7, 2003) and was continued during a public teleconference meeting held on October 3, 2003 (68 FR 53734, September 12, 2003).

Furthermore, On August 29, 2003, the Office of Air Quality Planning and Standards (OAQPS), within EPA's Office of Air and Radiation, made available for public review and comment (68 FR 51774, August 28, 2003) the *Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (OAQPS Staff Paper—First Draft) (first draft PM Staff Paper)* and a related technical report, *Particulate Matter Health Risk Assessment for Selected Urban Areas (Draft Report) (draft PM Risk Assessment).* The purpose of the first draft Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in the EPA's AQCD for PM, and to identify critical elements that EPA believes should be considered in the review of the PM NAAQS. In essence, the Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the AQCD for PM and the public health and welfare policy judgments required of the EPA Administrator in reviewing the PM NAAQS. The draft Risk Assessment describes and presents the preliminary results from a PM health risk assessment for fine particles ($PM_{2.5}$), coarse fraction particles ($PM_{10-2.5}$), and PM_{10}. The risk assessment methodology and preliminary results also are summarized in the first draft Staff Paper. Detailed summary information on the history of the first draft Staff Paper and draft Risk Assessment is contained in a previous EPA **Federal Register** notice (68 FR 51774). The *Review of the National*

Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (OAQPS Staff Paper—First Draft) and *Particulate Matter Health Risk Assessment for Selected Urban Areas (Draft Report)* can be viewed and downloaded from EPA's Technology Transfer Network (TTN) Web site at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.* Any questions concerning the first draft Staff Paper and draft Risk Assessment for PM should be directed to Dr. Mary Ross, OAQPS–RTP, at telephone: (919) 541–5170, or e-mail: *ross.mary@epa.gov.*

Availability of Additional Meeting Materials: A copy of the draft agenda for the meeting that is described in this notice will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the ''Agendas'' subheading) in advance of the CASAC PM Review Panel meeting.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board Staff Office expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Deadlines for getting on the public speaker list for a meeting are provided above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Butterfield at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or e-mail address noted above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 16, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–26664 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0332; FRL–7331–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the Physiologically-Based Pharmacokinetic Modeling (PBPK): Pilot analysis with a n-methyl carbamate pesticide.

DATES: The meeting will be held on December 11 and 12, 2003, from 8:30 a.m. to approximately 5 p.m., eastern standard time.

Comments: For the deadline for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before November 3, 2003.

Special seating: Requests for special seating arrangements should be made at least 5 days prior to the meeting.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Comments: Written comments may be submitted electronically (preferred), by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special seating: To submit nominations to serve as an ad hoc member of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2003–0332 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: *christian.myrta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0332. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than late November 2003. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

Public commenters should note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comments due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comments, 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 comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0332. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0332. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0332. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0332. For questions about delivery options, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this document.
6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0332 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, December 1, 2003, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. To the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although, submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern standard time, November 24, 2003, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Individuals nominated should have expertise in one or more of the following areas: PBPK Modeling and PBPK-Related Issues, modeling and quantitative issues, and cholinesterase and cholinesterase-inhibiting chemicals. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before November 1, 2003.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists–experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short-time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as a ''Special Government Employee.'' The Agency will review all nominations. FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP

for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review the Physiologically-Based Pharmacokinetic Modeling (PBPK): Pilot analysis with a n-methyl carbamate pesticide. The Agency is in the early stages of developing a methodology that incorporates PBPK modeling to assess the cumulative risk for the n-methyl carbamate pesticides. The intent of this methodology is to provide a basis for extrapolation of cumulative risk of multiple common mechanism chemicals between species, from high to low doses, and across temporal dosing patterns and routes of exposure. As a starting point, the Agency will present its PBPK approach for one n-methyl carbamate. The purpose of the meeting will be to review a pilot analysis of this PBPK model. The Agency will request comment from the panel on various technical aspects of the pilot approach (e.g., model structure, pharmacokinetic and dynamic parameters).

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 10, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–26669 Filed 10–21–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7577–4]

Science Advisory Board Staff Office; Committee on Valuing the Protection of Ecological Systems and Services Notification of Upcoming Public Workshop and Public Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is announcing a non-advisory public workshop and a public advisory meeting of the Board's Committee on Valuing the Protection of Ecological Systems and Services (Committee).

DATES: *October 27, 2003.* The Committee will participate in an Initial EPA Background Workshop for the Committee from 9 a.m.–6 p.m. (Eastern Time).

October 28, 2003. A public advisory meeting for the Committee will be held from 8:30 a.m. to 6 p.m. on October 28, 2003.

ADDRESSES: The meeting location for the October 27, 2003 workshop and the October 28, 2003 Committee meeting will be in Washington, DC. The meeting location will be announced on the SAB Web site, *http://www.epa.gov/sab* in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the upcoming workshop, the upcoming advisory meeting, or the Committee may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4562; or via e-mail at *nugent.angela@epa.gov.* General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is given that the Committee will hold a public meeting, as described above, to provide initial consultative advice on the development of EPA's Strategic Plan for Ecological Benefits and to plan the Committee's work.

Background on the Committee and its charge was provided in a **Federal Register** notice published on March 7, 2003 (68 FR 11082–11084). The overall charge to the Committee is to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services, and then to identify key areas for improving knowledge, methodologies, practice, and research.

At its first advisory meeting, the Committee will be providing consultative advice on the Agency's plans to develop an ''Ecological Benefits Assessment Strategic Plan.'' Documents related to that consultation will be available at the following website, maintained by EPA's National Center for Environmental Economics at: *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/homepage?Opendocument.* A notice in the ''News Alerts'' box will direct readers to the materials.

The purpose of the day-long workshop, which precedes the advisory meeting, will be to provide a brief introduction for the Committee to the major types of EPA decisions involving valuing ecological systems and services, current EPA tools and EPA's needs.

Agendas for the public workshop and advisory meeting will be posted on the SAB website ten days before the dates of those events.

Procedures for Providing Public Comment. It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) identified above at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the

following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 16, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–26665 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7577–8]

Peer-Consultation Workshop on Tropospheric Ozone Formation, Concentrations, Exposure Estimates and Health Effects

AGENCY: Environmental Protection Agency.

ACTION: Notice of a peer-consultation workshop and public meeting.

SUMMARY: Today the U.S. Environmental Protection Agency (EPA) announces an October 29–30, 2003, expert peer-consultation workshop to facilitate preparation of preliminary draft chapters that cover tropospheric ozone (formation, concentrations, and exposure estimates) and the effects of ozone exposure in laboratory animals and on humans for an external review draft of a revised EPA document, *Air Quality Criteria for Ozone and Related Photochemical Oxidants.* Science Applications International Corporation (SAIC), an EPA contractor, will organize, convene, and conduct the peer-consultation workshop. Workshop draft chapters on these topics, prepared by the EPA's National Center for Environmental Assessment within the Office of Research and Development, will be available to registered public observers at the workshop. NCEA will consider the workshop, peer-consultation advice in preparing revised chapters for later release for public comment.

DATES: The peer-consultation workshop will begin on Wednesday, October 29, 2003, at 8:30 a.m., and end on Thursday, October 30, 2003, at 5 p.m. Members of the public are invited to attend the workshop as observers.

ADDRESSES: The peer-consultation workshop will be held in the Auditorium of the U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Logistics and registration for the workshop are being arranged by SAIC, 11251 Roger Bacon Drive, Reston, VA 20190. To attend the workshop, register by Monday, October 27, 2003, by contacting Ms. Alina Martin, SAIC, at (703) 318–4678, or by sending a facsimile to (703) 736–0826. You can also register in advance via e-mail at *tcs-events@saic.com.* Space is limited, and reservations will be accepted on a first-come, first-serve basis. On-site registration on October 29–30, 2003, will be available, as space allows.

FOR FURTHER INFORMATION CONTACT: EPA's contractor, SAIC, should be contacted for details pertaining to the workshop, registration, and logistics. For technical information contact: James Raub, U.S. EPA, NCEA–RTP, B243–01, Research Triangle Park, NC 27711; telephone: (919) 541–4157; facsimile: (919) 541–1818; or e-mail: *raub.james@epa.gov.*

SUPPLEMENTARY INFORMATION: As discussed in a previous call for information (65 FR 57810, September 26, 2000), EPA is in the process of updating, and revising where appropriate, the document *Air Quality Criteria for Ozone and Related Photochemical Oxidants* (Ozone Criteria Document), as issued in July 1996. Sections 108 and 109 of the Clean Air Act require that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria and national ambient air quality standards (NAAQS) for ''criteria'' air pollutants such as ozone.

As part of the review of the air quality criteria for ozone, a series of peer-consultation workshops are being convened to discuss and help prepare draft sections and chapters for the revised Ozone Criteria Document. Preliminary outlines of the proposed chapters were presented in the draft Project Work Plan released for public comment and for review by the Clean Air Scientific Advisory Committee of EPA's Science Advisory Board (66 FR 67524, December 31, 2001; 68 FR 3527, January 24, 2003). The first peer-consultation workshop was held on April 22 and 23, 2003 (68 FR 17365, April 19, 2003), to help develop a draft chapter on the environmental effects of ozone.

Copies of the draft materials for this next consultation workshop will be made available to the public at the workshop. Workshop draft sections and chapters will be revised for inclusion in the First External Review Draft of the Ozone Air Quality Criteria Document to be released later for public comment and for review by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board. EPA will announce the availability of this draft in a subsequent **Federal Register** notice and, at that time, will provide ample opportunity for public review and submission of written comments.

Interested parties are invited to assist the EPA in further developing and refining the scientific information base by identifying and submitting new information on the potential health and environmental effects of ozone. To be considered for inclusion in the criteria document, submitted information should be published or be accepted for publication in a peer-reviewed scientific journal.

Dated: October 17, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–26752 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0347; FRL–7324–4]

Diazinon; Product Registrations Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the cancellations, as requested by Drexel Chemical Company and Makhteshim Chemical Works, Limited, for all of their outdoor non-agricultural manufacturing-use products containing diazinon [O,O-diethyl O-(2-ispropyl-6-methyl-4-pyrimidinyl) phosphorthioate], and as requested by Walla Walla Environmental, Incorporated, for its only outdoor non-agricultural end-use product containing diazinon. This order follows up a July 11, 2003 notice of receipt of requests from the three companies for cancellations of the above named product registrations. In the July 11, 2003 notice, EPA indicated that it would issue an order granting the voluntary product registration cancellations, unless the Agency received substantive comments within

the comment period that would merit its further review of these requests. The Agency did not receive any comments specific to these requested cancellations. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: This cancellation order is effective immediately.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0347. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. EPA also established two dockets containing documents in support of the diazinon IRED. They are dockets OPP–34225 and OPP–2002–0251. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces cancellation, as requested by Drexel Chemical Company and Makhteshim Chemical Works, Limited of all of their diazinon outdoor non-agricultural manufacturing-use products registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and cancellation, as requested by Walla Walla Environmental, Incorporated, of its only diazinon outdoor non-agricultural end-use product. These registrations are listed in ascending sequence by registration number in Table 1 of this unit.

A. Background Information

Diazinon is an organophosphorous insecticide and is one of the most widely used insecticides in the United States. It is used for outdoor non-agricultural, as well as agricultural, pest control.

Under the December 5, 2000, Memorandum of Agreement between the technical registrants of diazinon and EPA, as well as a February 14, 2001 letter, from Drexel Chemical Company, both Makhteshim Chemical Works, Limited and Drexel Chemical Company requested, under FIFRA section 6(f), that EPA cancel, effective as of June 30, 2003, the registrations of all diazinon manufacturing-use products permitting formulation for outdoor non-agricultural use. These requests were contingent upon EPA's granting of certain existing stocks provisions, which are set forth in Unit V. of this notice. In a June 5, 2003 letter, Walla Walla Environmental, Incorporated requested, under FIFRA section 6(f), that EPA cancel the registration of its only diazinon outdoor non-agricultural end-use product. EPA announced its receipt of the above-mentioned cancellation requests in a **Federal Register** notice dated July 11, 2003 (FRL–7310–2).

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration number	Product name	Chemical name
11678–62	Diazol Diazinon Technical Stabilized HG	Diazinon
11678–64	Diazol Diazinon Stabilized Oil Concentrate HG	Diazinon
19713–524	Drexel Diazinon Technical HG	Diazinon
47332–4	CPF–2D Insecticide	Diazinon

Table 2 of this unit includes the names and addresses of records for all registrants of the products in Table 1 of this unit, in ascending sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company number	Company name and address
11678	Makhteshim Chemical Works, Limited, 551 Fifth Avenue, Suite 1100, New York, NY 10176
19713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113
47332	Walla Walla Environmental, Incorporated, P.O. Box 1298, Walla Walla, WA 99362

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of diazinon product registrations identified in Table 1 of this notice. Accordingly, the Agency orders that the diazinon product registrations identified in Table 1 are hereby canceled. Any distribution, sale, or use of existing stocks of these products in a manner inconsistent with any of the provisions for disposition of existing stocks set forth below in Unit V. of this notice will be considered a violation of FIFRA.

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions:

A. Outdoor Non-Agricultural Manufacturing-Use Products

1. *Distribution or sale*. The distribution or sale of existing stocks of any outdoor non-agricultural manufacturing-use product referenced in this notice (EPA Reg. No. 11678–62, 11678–64, and 19713–524) is no longer lawful, except for the purposes of export consistent with FIFRA section 17 and proper disposal in accordance with applicable law.

2. *Use for producing other products*. The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any other product labeled for outdoor non-agricultural use is no longer lawful under FIFRA.

The effective date of the cancellation order is intended to be immediate for the outdoor non-agricultural products listed in Table 1 (EPA Reg. No. 11678–62, 11678–64, 19713–524, and 47332–4).

B. Outdoor Non-Agricultural End-Use Products

1. *Distribution or sale by registrant*. The distribution or sale of existing stocks by Walla Walla Environmental, Incorporated, of the end-use product referenced in this notice (EPA Reg. No. 47332–4) is no longer lawful under FIFRA, except for purposes of shipping such stocks for export consistent with the requirements of FIFRA section 17 or proper disposal in accordance with applicable law.

2. *Retail and other distribution or sale*. The distribution or sale of existing stocks by persons other than Walla Walla Environmental, Incorporated, will be prohibited after December 31, 2004, except for purposes of product recovery pursuant to the 2000 Memorandum of Agreement, shipping such stocks for export consistent with the requirements of FIFRA section 17, or proper disposal in accordance with applicable law.

3. *Use of existing stocks*. Use of existing stocks may continue until stocks are exhausted. Any such use must be in accordance with the label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 29, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–26413 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0317; FRL–7328–4]

Bacillus thuringiensis Cry3Bb1; Notice of Filing a Pesticide Petition to Establish a Tolerance Exemption for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0317, must be received on or before November 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308 8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult

the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0317. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0317. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0317. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001, Attention: Docket ID Number OPP–2003–0317.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0317. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 9, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Monsanto Company

PP 7F4888

EPA has received a pesticide petition request from Monsanto Company, 800 North Lindberg Blvd., St. Louis, Missouri 63167, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by removing the time limitation for the exemption from the requirement of a tolerance for the plant-incorporated protectant *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn in or on field corn, sweet corn, and popcorn. The tolerance exemption was originally requested under pesticide petition number PF 7F4888.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Monsanto Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Monsanto Company and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Corn has been genetically transformed to produce variants of the *Bacillus thuringiensis* protein Cry3Bb1. The production of Cry3Bb1 protein in root tissue protects corn from damage caused by corn rootworm larval feeding. Plants producing this protein are derived from transformation events that contain the insecticidal gene and the genetic material necessary for its expression in corn. Data developed with multiple Cry3Bb1 variants and corn transformation events indicate that the protein poses no foreseeable risks to nontarget organisms, including mammals, birds, fish, beneficial insects and earthworms. Cry3Bb1 corn is less toxic than all other currently registered rootworm control products. Cry3Bb1 corn provides growers with a highly efficacious product for controlling damage caused by corn rootworms that is compatible with integrated pest management practices.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The gene encoding Cry3Bb1 protein was isolated from *Bacillus thuringiensis* subspecies *kumamotoensis* and modified before insertion into corn. Data characterizing the Cry3Bb1 variant produced in corn have been submitted to and reviewed by EPA. Safety studies were conducted with purified extracts of Cry3Bb1 produced in a heterologous bacterial fermentation system. Data submitted by Monsanto demonstrate that the plant- and bacterial-produced proteins are equivalent with respect to immunoreactivity, molecular weight, amino acid sequence, level of glycosylation, and insecticidal activity. Production of microbial Cry3Bb1 was

needed to obtain sufficient quantities of the protein for use in safety testing.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Cry3Bb1 residue data should not be required for a human health effects assessment because of the demonstrated lack of mammalian toxicity.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* A validated method for extraction and direct enzyme linked immunosorbent assay (ELISA) analysis of Cry3Bb1 in corn grain has been submitted to the Agency.

C. Mammalian Toxicological Profile

Cry proteins have been used safely and effectively as pest control agents in microbial *Bacillus thuringiensis* formulations for more than 40 years. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically nontoxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to purified Cry3Bb1 proteins. These data demonstrate the safety of the proteins at levels well above maximum possible exposure levels that are reasonably anticipated in crops. This conclusion is consistent with the Agency position regarding toxicity and residue data requirements for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are only triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (*i.e.*, Tier II and Tier III testing).

Acute oral toxicity studies have been submitted for three Cry3Bb1 variants. These variants of the wild type Cry3Bb1 protein contain a small number of amino acid substitutions (four to seven) to enhance insecticidal activity against corn rootworm larvae. The acute oral toxicity data submitted support a prediction that Cry3Bb1 protein will be nontoxic to humans. Male and female mice (10 per sex per dose level) were dosed with 36, 396, or 3,780 milligrams/kilogram bodyweight (mg/kg bwt) of Cry3Bb1 protein for one variant. Mice were dosed with 39, 419, or 2,980 mg/kg bwt for a second Cry3Bb1 variant. Mice were dosed with 400, 1,100, or 3,200 mg/kg bwt of Cry3Bb1 for a third Cry3Bb1 variant. In one study, two animals in the high dose group died within a day of dosing. These animals both had signs of trauma probably due to dose administration (*i.e.*, lung perforation or severe discoloration of lung, stomach, brain, and small intestinal tissue). No clinical signs were observed in the surviving animals and body weight gains were normal throughout the 14–day study for the remaining animals. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance in any of the three studies. No other mortality or clinical signs attributed to the test substance were noted in any of the studies.

When proteins are toxic, they are known to act via acute mechanisms and at very low levels (Sjoblad, R. *et al.* ''Toxicological Considerations for Protein Components of Biological Pesticide Products.'' *Regulatory Toxicol. Pharmacol.* 15:3–9, 1992). Since no acute effects were shown to be caused by Cry3Bb1 proteins, even at relatively high dose levels, they are not considered toxic. Furthermore, amino acid sequence comparisons between the Cry3Bb1 variants and known toxic proteins available in public databases showed no similarities.

Since Cry3Bb1 variants are proteins, the potential for allergic sensitivities was evaluated. Current scientific knowledge suggests that common food allergens are present at high concentrations in food, are resistant to pepsin digestion, may be resistant to acid or heat, and can be glycosylated. Data have been submitted demonstrating that the Cry3Bb1 proteins are rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (pH 1.2 U.S. Pharmacopeia), complete degradation of detectable Cry3Bb1 protein occurred within 30 seconds. Insect bioassay data indicate that the protein loses insecticidal activity within 2 minutes of incubation in simulated gastric fluid. Incubation in simulated intestinal fluid resulted in a ~59 kDa protein digestion product. Cry3Bb1 protein produced in corn is not glycosylated and it is not detectable in grain following baking at elevated temperatures.

An analysis of amino acid sequences of known allergens uncovered no evidence of sequence homology with Cry3Bb1, even at the level of eight contiguous amino acid residues. The potential for Cry3Bb1 proteins to be food allergens is minimal. Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that Cry3Bb1 proteins will be nontoxic to humans.

The genetic material encoding the Cry3Bb1 proteins and the regulatory regions controlling expression of the nucleotide sequence encoding Cry3Bb1 proteins are nucleic acids deoxyribonucleic acid/ribonucleic acid ((DNA) and (RNA)). DNA and RNA occur in all forms of plant and animal life and there is no documented instance of nucleic acids being associated with toxic effects when consumed as a component of food. Data characterizing the genetic material necessary for the production of Cry3Bb1 in corn has been provided to the Agency. No mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for production of the subject plant-incorporated protectant.

D. Aggregate Exposure

Data have been submitted with which to evaluate aggregate exposure levels for consumers to residues of the plant-incorporated protectant.

1. *Dietary exposure.* Cry3Bb1 is a plant-incorporated protectant in corn, thus dietary exposure is deemed to be the most relevant route for assessing human risk.

i. *Food.* Oral exposure, at very low levels, may occur from ingestion of processed corn products. However, a lack of mammalian toxicity and the rapid digestibility of the plant-incorporated protectant have been demonstrated.

ii. *Drinking water.* Oral exposure from ingestion of drinking water is unlikely because the protein is present at low levels within the plant and submitted studies demonstrate that Cry3Bb1 is rapidly degraded in soil.

2. *Non-dietary exposure.* Exposure via skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces them to negligible. The use sites for Cry3Bb1 proteins are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected.

E. Cumulative Exposure

Since there is no indication of mammalian toxicity to the plant-incorporated protectant there will be no opportunity for cumulative toxic effects.

F. Safety Determination

1. *U.S. population.* Sufficient data have been submitted for the purpose of assessing health risk of Cry3Bb1

proteins and the genetic materials necessary for their production in raw agricultural commodities. The complete absence of toxicity in high dose acute oral studies, the lack of sequence homology with known protein toxins, rapid digestion in a gastric matrix, and minimal allergenicity potential provide a reasonable certainty of no harm for the U.S. general population potentially exposed to Cry3Bb1 proteins.

2. *Infants and children*. Nondietary exposure to infants and children is not anticipated due to the patterns of use for this plant-incorporated protectant. The submitted data provide no evidence of adverse threshold effects for Cry3Bb1 proteins that would warrant application of an additional safety factor for the protection of infants and children. Furthermore, the provisions for consumption patterns, special susceptibility, and cumulative effects do not apply.

G. Effects on the Immune and Endocrine Systems

The lack of Cry3Bb1 toxicity in high dose acute oral studies and its rapid degradation in a mammalian digestive system suggests minimal risk for adverse effects on the immune system. This pesticidal active ingredient is a protein, derived from sources that are not known to exert an influence on the endocrine system.

H. Existing Tolerances

There is an existing time-limited tolerance exemption for *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in food and feed commodities of field corn, sweet corn and popcorn (40 CFR 180.1214). Unless amended, this exemption is scheduled to expire on May 1, 2004.

I. International Tolerances

No Codex maximum residue levels have been established for this plant-incorporated protectant at this time.

[FR Doc. 03–26414 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0345; FRL–7330–1]

Formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl); Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0345, must be received on or before November 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0371; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0345. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly

available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0345. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID number OPP–2003–0345. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0345.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0324. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment

and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 10, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Nichino America and represents the view of Nichino America. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Nichino America

PP 3E6753

EPA has received a pesticide petition (3E6753) from Nichino America, 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.960, by establishing a tolerance exemption for residues of formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) when used as an inert ingredient in a pesticide product. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Nichino America is petitioning that formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) be exempt from the requirement of a tolerance based upon the definition of a low risk polymer under 40 CFR 723.250(e). Consequently, Nichino America believes that the analytical method to determine residues, the residues present in plant material, and the magnitude of formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) in raw agricultural commodities, is not relevant.

B. Toxicological Profile

1. Formaldehyde, polymer with à-[bis(1-phenylethyl) in phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) is a polymer as defined 40 CFR 723.250(2)(b). It is composed of at least 3 monomer units and 1 other reactant.

2. Formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) consists of a simple weight majority of the polymer molecules. The monomer sequences form uninterrupted strings in the polymer and distribution of the molecular weight of the polymer is due largely to the number of monomer units in the individual molecules.

3. Formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) consists of a number average molecular weight of 1,803 with less than 0.45% of its oligomeric material weighing below 500 daltons and less than 0.45% of its oligomeric material weighing less than 1,000 daltons.

4. Formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) will not become cationic in an aquatic environment. It contains no moieties capable of obtaining a cationic charge.

5. Formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) is composed of carbon, hydrogen, and oxygen; therefore, it meets the criteria of elemental composition. Namely it must be composed of at least two of the following elements (and no other elements than those listed); carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

6. Formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) is not designed nor reasonably expected to degrade, decompose, or depolymerize under normal use conditions

7. Formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) is composed of molecules that are listed on the TSCA Inventory or manufactured under an applicable TSCA section 5 exemption.

8. Although, formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) does not exceed the number average molecular weight of 10,000 and therefore is not subject to the water absorption limitation, it nonetheless still satisfies the criteria of being a non-water absorbing species.

C. Aggregate Exposure

1. *Dietary exposure.* The physical-chemical characteristics of formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) leads to the conclusion that there is a reasonable certainty of no harm from exposure to the polymer from food or drinking water nor from an aggregate exposure.

2. *Non-dietary exposure.* The physical-chemical characteristics of formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) lead to the conclusion that there is a reasonable certainty of no harm from exposure to the polymer from non-dietary means.

D. Cumulative Effects

At this time there is no information to indicate that any toxic effects produced by formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) would be cumulative with any other chemical. Given the compound's categorization as a low risk polymer, and its proposed use in pesticide formulations, there is no expectation of increased risk due to cumulative exposure.

E. Safety Determination

1. *U.S. population.* Based on the polymer's physical-chemical properties, and that it meets or exceeds the polymer exemption criteria at 40 CFR 723.250 for low-risk polymers, adverse effects are not expected.

2. *Infants and childrens.* Based on the polymer's physical-chemical properties, and that it meets or exceeds the polymer exemption criteria at 40 CFR 723.250 for low-risk polymers, adverse effects are not expected.

F. International Tolerances

There are no CODEX maximum residue limits established for formaldehyde, polymer with à-[bis(1-phenylethyl)phenyl]-ù-hydroxypoly(oxy-1,2 ethanediyl) in or on crops or commodities at this time.

[FR Doc. 03–26667 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0257; FRL–7322–5]

Mesosulfuron-methyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0257, must be received on or before November 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0257. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be

marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0257. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0257. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0257.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0257. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 9, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Bayer CropScience and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 1F6298

EPA has received a pesticide petition (1F6298) from Bayer CropScience, 2

T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of methyl 2-[[[[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonyl]amino-]sulfonyl]-4-[[(methylsulfonyl) amino]methyl]benzoate, CAS No. 208465–21–8 (Mesosulfuron-methyl, Company Code AE F130060) in or on the raw agricultural commodities wheat grain at 0.03, wheat forage at 0.60, wheat straw at 0.30, wheat hay at 0.06, wheat germ at 0.10, aspirated grain fractions at 0.25, and milled byproducts at 0.03 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of mesosulfuron-methyl in wheat has been investigated and is understood. Identification of the extractable residues in grain was not possible due to the extremely low residue levels. In mature straw, three metabolites were identified at very low levels in addition to the parent AE F130060. Demethylation of one methoxy group on the pyrimidyl ring led to methyl 2-[3-(4-hydroxy-6-methoxy-pyrimidin-2-yl)ureidosulfonyl]-4-methanesulfonamidomethylbenzoate. Cleavage of the sulfonylurea bridge formed the interim phenyl metabolite, methyl-4-methanesulfonamidomethyl-2-sulfamoyl-benzoate, which further cyclised to 6-methanesulfonamidomethyl-1,2-benzisothiazol-3(2H)-one 1,1-dioxide. The same metabolites were also detected in green plants (forage stage) as the main components; however, the parent substance contributed to a higher proportion to the total radioactive residue. All metabolites detected in plants were also found in animal metabolism studies.

2. *Analytical method*. Based on the results of the metabolism studies, the analytical target selected was the parent compound mesosulfuron-methyl (AE F130060). Extractable residues of AE F130060 are extracted from the crop matrix by blending with a solution of acetonitrile, water and triethylamine. After filtration, the extract is partitioned with hexane, then concentrated to a reduced volume. The resulting solution is diluted with 0.01M formic acid, and partitioned with ethyl acetate. An aliquot of ethyl acetate is evaporated to dryness and reconstituted in acetonitrile/water. This acetonitrile/water extract is analyzed by HPLC-MS/MS for AE F130060. For some forage samples, an additional solid phase extraction clean up was required to suppress matrix enhancement effects.

3. *Magnitude of residues*. The metabolism studies with 14C-labelled mesosulfuron-methyl in wheat demonstrated that in general, low residues were detected in the plant samples. These results have been confirmed in a total of 24 North American residue field trials using a water dispersible granule (WG) formulation containing 75% weight/weight (w/w) mesosulfuron-methyl. The preparation was applied in a single application, at a rate of 25 g a.i./ha. Pre-harvest intervals were between 4 and 68 days, 21 and 96 days, 50 and 91 or 50 and 134 days respectively for forage, hay, straw and grain. Residues in forage and straw ranged from below the limit of quantitation (LOQ), (0.05 milligrams/kilogram (mg/kg)) to 0.55 mg/kg and 0.25 mg/kg respectively. No residues above the LOQ of 0.05 mg/kg were observed in hay. Residues in grain ranged from below the LOQ (0.01 mg/kg) to 0.026 mg/kg. Tolerances for mesosulfuron-methyl are proposed at 0.6 mg/kg, 0.06 mg/kg, 0.3 mg/kg and 0.03 mg/kg respectively, for wheat forage, hay, straw and grain. In a wheat processing study, residues of mesosulfuron-methyl in the grain reached 0.011 mg/kg following treatment of the wheat at 75 g a.i./ha. This exaggerated rate is approximately 5 times the maximum proposed label rate. In the processed fractions, residues of mesosulfuron-methyl were 0.014 mg/kg, 0.045 mg/kg and 0.014 mg/kg respectively in shorts, wheat germ and bran. No mesosulfuron-methyl residues above the LOQ (0.01 mg/kg) were observed in flour or middlings. Concentration factors of 1.3, 4.2 and 1.3, respectively were estimated for shorts, wheat germ and bran. Therefore, tolerances are proposed at 0.1 mg/kg for wheat germ and 0.03 mg/kg for milled by-products (shorts, middlings and bran). No tolerance is proposed for flour since there was no evidence of concentration. Therefore, the tolerance for wheat grain will cover flour. In the same study, samples of aspirated grain dust were collected and found to contain residues of 0.23 mg/kg. Accordingly, a tolerance of 0.25 mg/kg is proposed for aspirated grain fractions. Although, wheat grain is fed to poultry, and cattle may be grazed on forage or fed grain, hay or straw, tolerances in meat, milk or eggs are not necessary because dietary burden calculations have demonstrated that quantifiable residues of mesosulfuron-methyl will not occur in animal tissues.

B. Toxicological Profile

1. *Acute toxicity*. Mesosulfuron-methyl has very low acute toxicity to mammals by all tested routes of exposure. Both the oral and dermal LD_{50}'s in the rat are greater than 5,000 milligrams/kilogram body weight (mg/kg bwt). The acute inhalation LC_{50} (4–hour) is greater than 1.33 milligrams per liter (mg/L) air, the maximum attainable concentration. Mesosulfuron-methyl was not irritating to rabbit skin and only slightly irritating to the eye. Mesosulfuron-methyl did not induce delayed contact hypersensitivity (skin sensitization) in the maximization test. Based on these results, mesosulfuron-methyl is expected to be in EPA Category III or IV for all routes of acute exposure.

2. *Genotoxicty*. Testing for possible genotoxic properties of mesosulfuron-methyl *in vivo* and *in vitro* gave consistently negative results. The *in vitro* test battery included investigations for gene mutation in bacteria and mammalian cells, examination of chromosomal aberrations in Chinese hamster cells and testing for unscheduled DNA-synthesis (UDS) in primary rat hepatocytes. The *in vivo* mouse micronucleus assay was also conducted. As all five tests were negative and no evidence for carcinogenicity was seen in life-time experiments in two species, results indicate that mesosulfuron-methyl does not possess significant genotoxic activity.

3. *Reproductive and developmental toxicity*. A two-generation reproduction study in rats was conducted with dietary dose levels of 0, 160, 1,600 and 16,000 ppm of technical mesosulfuron-methyl. There were no treatment-related adverse effects of the test material in any groups up to and including 16,000 ppm in the P and F1 generation male or female rats. This included mortality, clinical observations, general behavior, body weights, body weight gain, feed consumption, estrus cycle, sperm production, fertility, parturition, lactation, organ weights or microscopic findings. Therefore, the no observed adverse effect level (NOAEL) for the F0 and F1 parental animals for toxicity and reproductive effects is 16,000 ppm. The NOAEL for toxicity, growth and development of the F1a, F1b, F2a, and F2b offspring is 16,000 ppm, equivalent

to a mean daily test substance intake of at least 1,175 and 1,388 mg/kg bwt for males and females, respectively.

A rat developmental toxicity (teratogenicity) study was conducted with dose levels of 0, 100, 315 and 1,000 mg mesosulfuron-methyl/kg bwt. Treatment did not cause lethality or effects on body weight. There were no clinical signs of toxicity. Pregnancy indices were unaffected. No treatment-related effects were observed in fetuses upon external, internal or skeletal evaluation. Therefore, the no observed effect level (NOEL) for both maternal and embryo-fetal toxicity was the limit dose of 1,000 mg/kg. Mesosulfuron-methyl was not teratogenic in rats.

The rabbit developmental toxicity (teratogenicity) study was conducted with dose levels of 0, 100, 315 and 1,000 mg mesosulfuron-methyl/kg body weight/day. No treatment-related deaths or clinical signs were seen. There were no effects on body weight development. No treatment-related effects were observed in fetuses upon external, internal or skeletal examination. Therefore, the NOAEL for maternal and developmental toxicity was the limit dose of 1,000 mg/kg. Mesosulfuron-methyl was not teratogenic in the rabbit. In reproductive and developmental toxicity studies, mesosulfuron-methyl gave no evidence of reproductive, embryo-fetal or neonatal toxicity. Therefore, the potential for reproductive toxicity-related to mesosulfuron-methyl is low.

4. *Subchronic toxicity.* In a 90–day rat feeding study, groups of 10 male and 10 female Wistar rats were fed diets containing either 0, 240, 1,200, 6,000 or 12,000 ppm of mesosulfuron-methyl. The administration of mesosulfuron-methyl up to the limit dose of 12,000 ppm was well tolerated. There were no mortalities and no adverse clinical findings. Body weight gains and feed consumption were comparable in all groups. There were no adverse behavioral, neurological or ophthalmoscopic findings. There were no effects on organ weights or histopathology. The NOAEL for this study was considered to be 12,000 ppm, corresponding to a daily substance intake of 907.5 mg/kg bwt in males and 976.5 mg/kg in females.

In a 90–day feeding study in mice, mesosulfuron-methyl was administered at dietary concentrations of 0, 140, 1,000, and 7,000 ppm. Leukocyte counts were slightly lower in males at 1,000 and 7,000 ppm. However, since there were no corresponding histopathology findings, in particular no compensatory effect in the bone marrow and no adverse clinical effects associated with this finding, the NOAEL was 7,000 ppm mesosulfuron-methyl, equivalent to daily intakes of 1,238 mg/kg bwt/day in males and 1,603 mg/kg bwt/day in females.

Groups of 4 male and 4 female beagle dogs were administered mesosulfuron-methyl at dietary concentrations of 0, 2,000, 10,000, and 20,000 mg/kg/ bwt/day for 13 consecutive weeks. Mesosulfuron-methyl at concentrations of up to 20,000 ppm did not affect the general health status, behavior, body weight development or food consumption in dogs. No adverse effects were seen in hematology or biochemistry at any dose. There were no treatment-related changes in organ weights or histopathology. The NOAEL was 20,000 ppm (equating to 648 mg/kg bwt/day for males and 734 mg/kg bwt/day for females).

5. *Chronic toxicity.* A 1–year study was conducted in beagle dogs at doses of 1, 400, 4,000 and 16,000 ppm in the diet. There were no treatment-related effects noted other than non-specific signs of stomach irritation in some high dose dogs. The NOAEL was considered to be 16,000 ppm, equivalent to 574 mg/kg of body weight per day.

The oncogenic potential of mesosulfuron-methyl was examined in bioassays with rats and mice over dietary exposure periods of 24 months and 18 months, respectively.

Dietary administration of technical mesosulfuron-methyl to groups of 80 male and 80 female Wistar rats at concentrations of 0, 160, 1,600 or 16,000, ppm (corresponding to a daily substance intake of up to 865 mg/kg bwt for males and 1,056 mg/kg bwt for females) did not cause clinical symptoms or changes in hematology or biochemistry. All neoplastic and non-neoplastic lesions noted in the study were considered to be incidental findings commonly noted in rats of this strain and age and not related to treatment. The NOAEL for the daily administration of technical mesosulfuron-methyl for 12 or 24 months to male and female Wistar rats is 16,000 ppm.

Groups of 60 male and 60 female CD-1 mice were given dietary concentrations of 0, 80, 800, or 8,000 ppm technical mesosulfuron-methyl for up to 78 weeks. Mesosulfuron-methyl was not tumorigenic and did not cause non-neoplastic lesions. Leukocyte counts were increased in males and females at 8,000 ppm and in males at 800 ppm. However, as there were no indications for any adverse clinical or morphological effects related to the increased leukocyte values (and decreased values were seen in the 90–day study), 800 ppm is considered to be the NOAEL in the 18-month study. The NOAEL is based on lower body weight gains in females at the high dose level. This is equivalent to a mean achieved intake of 103 and 130 mg test substance/kg bwt/day in males and females, respectively.

Mesosulfuron-methyl is expected to be classified as ''Not Likely'' to be a carcinogen based on the lack of carcinogenic findings in rats and mice.

6. *Animal metabolism.* Following a single oral administration of either 10 or 1,000 mg/kg mesosulfuron-methyl to rats, 95.1% of the dose was found in the excreta 24 hours post-dosing. Fecal excretion was predominant, while only 12.8% and 1.3% of the low and high dose, respectively, were found in the urine. The predominant excretion product was unchanged mesosulfuron-methyl (>68%). The main metabolic pathway was cleavage of the sulfonylurea-bridge leading to the pyrimidine moiety (2-amino-4,6-dihydroxypyrimidine) and the resulting phenyl moiety which further cyclised to 6-methanesulfonamidomethyl-1,2-benzisothiazol-3(2H)-one 1,1-dioxide. Minor metabolic reactions observed were O-demethylation of the intact molecule at the pyrimidine moiety, cleavage of the sulfonylurea-bridge to form 4-hydroxy-6-methoxypyrimidin-2-yl-urea, and additional O-demethylation to 4,6-dihydroxypyrimidin-2-yl-urea. In addition, cleavage of the methanesulfonamidomethyl side chain leading to the free amine with further transformation to the alcohol (2-[3-(4,6-dimethoxypyrimidin-2-yl)ureidosulfonyl]-4-methanesulfonamidomethyl-benzoic acid) was also seen. An additional minor metabolite was a benzoic acid metabolite, formed by hydrolysis of the methyl ester of the parent.

Metabolism studies on mesosulfuron-methyl in ruminants and poultry were performed with application of dose levels which were equivalent to 20 ppm and 10 ppm, respectively. The results showed that mesosulfuron-methyl is predominantly excreted with little systemic distribution and limited metabolism. Residue levels in milk, meat and eggs were extremely low and the elimination from tissues was rapid. No tolerances have been proposed for animal tissues. The metabolic pathway in ruminants and poultry was similar to that in rats.

7. *Endocrine disruption.* No special studies investigating potential estrogenic or endocrine effects of mesosulfuron-methyl have been conducted. However, the standard battery of required studies has been

completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects and no such effects were noted in any of the studies with mesosulfuron-methyl.

C. Aggregate Exposure

1. *Dietary exposure*. Mesosulfuron-methyl is proposed for use as an herbicide on cereals. No non-agricultural uses are anticipated. The potential sources of exposure would consist of any potential residues in food and drinking water.

i. *Food*. Chronic dietary analysis was conducted to estimate exposure to potential mesosulfuron-methyl residues in/on wheat. A Tier I analysis was conducted using the DEEM™ software and the 1994–1996 Continuing Survey of Food Intake by Individuals (CSFII) food consumption data. It was assumed that residues were at tolerance levels of 0.03 ppm in grain and that 100% of crop was treated. Additionally, based on the results from appropriate studies, it was assumed that there was no concentration into processed commodities and that contributions from residues in meat, milk or eggs are not required. A chronic RfD of 1 mg/kg/day is derived from the 18–month mouse NOAEL of 103 mg/kg bwt/day, applying an uncertainty factor of 100 to account for intra-species variation and inter-species extrapolation. Using these input parameters, chronic exposure estimates for the U.S. population and all 25 population subgroups utilized less than 0.01% of the chronic reference dose. The most highly exposed population subgroup was non-nursing infants (<0.01% cRfD). These values are highly conservative, having been based on worst case assumptions of tolerance level residues and 100% of the crop treated.

ii. *Drinking water*. EPA's standard operating procedure (SOP) for drinking water exposure and risk assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct a screening level drinking water assessment. These tools include water models such as Screening Concentration in Groundwater (SCI-GROW), Generic Expected Environmental Concentration (GENEEC), EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZMS/EXAMS), the Food Quality Act (FQPA) Index Reservoir Screening Tool, and monitoring data. If monitoring data are not available, then models are used to predict potential residues in surface water and ground water and the highest value is assumed to be the potential drinking water residue. In the case of mesosulfuron-methyl, monitoring data do not exist; therefore, a Tier 1 model calculation was conducted to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for chronic exposures for adults is 35,000 ppb (35 ppm). The chronic DWLOC for children/toddlers is 15,000 ppb (15 ppm). The worst case chronic drinking water estimated concentration (DWEC) is 0.105 ppb based on the FQPA Index Reservoir Screening Tool simulation of runoff into surface water in a standard EPA exposure assessment scenario. The calculated DWLOCs for chronic exposures for all adults and children, therefore, greatly exceed the DWECs from the models.

2. *Non-dietary exposure*. Exposure to mesosulfuron-methyl for the mixer/loader/ground boom/aerial applicator was calculated using the Pesticide Handlers Exposure Database (PHED). It was assumed that the product would be applied to a maximum of 32 hectares per day (80 A/day) by ground boom applicator and 140 hectares per day (350 A/day) by aerial applicator at a maximum use rate of 15 grams active ingredient/hectares (a.i./ha.) Normal work attire consisting of long-sleeved shirt, long pants, and protective gloves was assumed in the PHED assessment. Margin of exposures (MOEs) for a 70 kg operator were calculated utilizing the NOAEL of 648 mg/kg body weight/day from the 90–day dog dietary study, which is adjusted for a 15% dermal absorption as revealed in an *in vivo* dermal absorption study, and 100% inhalation absorption to obtain the absorbed dermal and inhalation dose, respectively. The combined MOE (inhalation plus dermal) for mesosulfuron-methyl was 3,240,000 for a ground operator undertaking mixing, loading and spraying. For aerial application where the mixer/loader was assumed to be a different operator from the pilot, combined MOEs were 926,000 for the mixer/loader and 12,000,000 for the pilot. The results indicate that large margins of safety exist for the proposed use of mesosulfuron-methyl.

D. Cumulative Effects

There is no available data at this time to determine whether mesosulfuron-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Therefore, a cumulative assessment was not done for this chemical.

E. Safety Determination

1. *U.S. population*. Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure, in this case food only, to the proposed uses of mesosulfuron-methyl will utilize <0.01% of the reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Drinking water levels of comparison based on the dietary exposure are much greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) to mesosulfuron-methyl.

2. *Infants and children*. No evidence of increased sensitivity to fetuses was noted in developmental toxicity studies in rats or rabbits. There has been no indication of reproductive effects or indication of increased sensitivity to the offspring in the 2-generation rat reproduction study. No additional safety factor to protect infants and children is necessary as there is no evidence of increased sensitivity in infants and children.

Using the conservative assumptions described in the exposure section above, the percent of the reference dose that will be used for exposure to residues of mesosulfuron-methyl in food for non-nursing infants (the most highly exposed sub group) is <0.01%. The children (1–6) exposure uses are also <0.01% of the reference dose. As in the adult situation, drinking water levels of comparison are much higher than the worst case drinking water estimated concentrations and are expected to use well below 100% of the reference dose, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of mesosulfuron-methyl.

F. International Tolerances

There are no Codex Alimentarius Commission maximum residue levels established for residues of mesosulfuron-methyl.

[FR Doc. 03–26670 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0309; FRL–7326–1]

Phosphomannose Isomerase and the Genetic Material Necessary for Its Production in All Plants; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0309, must be received on or before November 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0309. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact

information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0309. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0309. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0309.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0309. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 9, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Inc.

PP 3E6748

EPA has received a pesticide petition (PP 3E6748) from Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-incorporated protectant inert ingredient phosphomannose isomerase (PMI) marker protein and the genetic material

necessary for its production in all plants in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Phosphomannose isomerase (PMI) and the genetic material necessary for its production is proposed for use as an inert ingredient in plants producing a plant-incorporated protectant active ingredient. Production of PMI in plant cells allows for selection and growth of genetically transformed plant cells in the presence of mannose as the sole or primary carbon source. PMI has no pesticidal activity. Its use allows the identification of plant cells that have successfully acquired the genetic material necessary to produce a plant-incorporated protectant.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* PMI is a ubiquitous enzyme that catalyzes the reversible interconversion of mannose-6-phosphate and fructose-6-phosphate. No other natural substrates for PMI are known. The *pmi* gene (also known as the *manA* gene) that encodes the PMI enzyme in transformed plants was derived from *E. coli* strain K–12. The gene encodes a 391–amino acid protein with an apparent of molecular weight of *ca.* 45,000. Functionally equivalent PMI enzymes with significant amino acid homology to this PMI protein have been identified among many diverse organisms including other bacteria, plants, fungi, insects, nematodes, mammals, and including humans. Unlike the traditional selectable markers used in plant cell transformation, PMI does not confer resistance to an antibiotic or herbicide.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of PMI protein measured in various plant parts representing an initial line of transformed corn plants. PMI was detected in grain from these corn plants at *ca.* 1–2 parts per million (ppm) on a dry- or fresh-weight basis, as measured by enzyme-linked immunosorbent assay (ELISA). Average PMI levels measured in chopped whole transformed corn plants were less than or equal to *ca.* 5 ppm on a dry-weight basis and less than or equal to *ca.* 1 ppm on a fresh-weight basis. In silage prepared from the same line of transformed corn plants, no PMI was detectable after 29 days.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the PMI protein by ELISA.

C. Mammalian Toxicological Profile

Syngenta Seeds, Inc. is providing the results of a mammalian toxicology study, *in vitro* digestibility study, heat stability study and bioinformatics evaluations conducted on the selectable marker protein PMI. These studies, summarized herein, demonstrate the lack of toxicity of the PMI protein following acute oral exposure to mice, rapid degradation of PMI upon exposure to simulated gastric and intestinal fluids, instability of the PMI protein upon heating, and the lack of significant amino acid sequence homology of the PMI protein to proteins known to be mammalian toxins or human allergens.

When proteins are toxic, they are known to act *via* acute mechanisms and at very low doses (Sjoblad, R.D., J.T. McClintock, and R. Engler (1992) Toxicological considerations for protein components of biological pesticide products. *Regulatory Toxicol. Pharmacol.* 15: 3–9). Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

Because it is not feasible to extract sufficient PMI protein from transformed plants for toxicology studies, PMI protein was produced in recombinant *E. coli* by over-expressing the same *pmi* gene that was introduced into transformed corn plants. The PMI protein encoded in this *E. coli* system was identical in amino acid sequence to that encoded in the transformed plants, except for additional *N*-terminal amino acids representing 13 amino acids from the T7 Tag™ and 3 amino acids from the vector polylinker. Following purification from *E. coli*, dialysis and lyophilization, the resulting sample, designated test substance PMI–0198, was estimated by ELISA to contain *ca.* 61% PMI protein by weight. PMI as contained in this test substance was enzymatically active, had the predicted apparent molecular weight, and immunoreacted with anti-PMI antibody. Side-by-side comparisons of PMI in test substance PMI–0198 with PMI extracted from transformed corn plants indicated that the proteins are substantially equivalent, as measured by enzymatic activity, apparent molecular weight, and immuno-crossreactivity with anti-PMI antibody. This justified the use of test substance PMI–0198 in safety studies as a surrogate for PMI as produced in transformed plants.

An acute mouse oral toxicity study was conducted according to EPA Harmonized Test Guideline OPPTS 870.1100. Test substance PMI–0198 was administered to seven male and six female mice *via* a gavage dose of 5,050 milligrams/kilogram body weight (mg/kg bwt), representing *ca.* 3,080 mg of pure PMI protein/kg bwt. A negative control group (six males and five females) concurrently received the dosing vehicle alone, a suspension of 0.5% carboxymethylcellulose, at the same dosing volume used for the test substance mixture. No test substance-related mortalities or clinical signs of toxicity occurred during the study. One male in the control group and two males in the test group died as a result of a perforated esophagus due to dosing error. Gross necropsy of the remaining mice at study termination revealed no observable abnormalities. Body weight, body weight gain, and organ weights (brain, liver, kidneys, and spleen) were comparable in the control and test groups. There was no evidence of toxicity. Accordingly, the lethal dose $(LD)_{50}$ value for PMI–0198 in male and female mice is greater than 5,050 mg/kg bwt, and the LD_{50} value for pure PMI protein is greater than 3,080 mg/kg bwt, the single dose tested.

Extensive bioinformatics searches of public protein data bases revealed that the PMI protein shows no significant amino acid homology to proteins known to be mammalian toxins or known or suspected to be human allergens. Additional information and testing indicate that the PMI protein does not have properties that would suggest it has the potential to become a food allergen. The source of PMI (*E. coli*) is not known to produce allergens. Unlike

allergenic proteins, which typically are present at 1–80% of the total protein in an offending food, the average PMI concentration measured in raw grain derived from a line of transformed corn plants represents less than 0.00002% of the total protein. (This calculation is based on corn grain containing 10% total protein by weight, and assumes 2 ppm PMI in the grain.) Additionally, due to degradation *via* food processing methods, PMI will not likely be present in processed food products, or will be present in only trace quantities. PMI produced in transformed plants is not targeted to a cellular pathway for glycosylation. PMI activity, and therefore tertiary protein structure, is lost upon heating at 65 degrees C for 30 minutes. PMI rapidly degrades upon exposure to simulated mammalian gastric and intestinal fluids.

The genetic material occurring in the subject inert ingredient has been adequately characterized. This genetic material (*i.e.*, the nucleic acids deoxyribonucleic acid (DNA) and ribonucleic acid (RNA)), including regulatory regions, necessary for the production of PMI as an inert ingredient in all crops will not present a dietary safety concern. ''Regulatory regions'' are the DNA sequences such as promoters, terminators, and enhancers that control the expression of the genetic material encoding the protein. Based on the ubiquitous occurrence and established safety of nucleic acids in the food supply, a tolerance exemption under the FFDCA regulations has been established for residues of nucleic acids that are part of plant-incorporated protectants or associated inert ingredients 40 CFR 174.475 (66 FR 37817) (FRL–6057–5). Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of PMI protein in all crops.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Due to the ubiquitous occurrence of PMI in nature, it is conceivable that the human diet has always contained small amounts of PMI proteins that are similar to that produced in plants transformed with the *E. coli pmi* gene. The levels of PMI measured in raw grain from a line of transformed corn plants averaged *ca.* 1–2 ppm. Processed plant products or by-products used in food are unlikely to have measurable PMI protein, or will have only trace amounts. Oral exposure is not expected to result in adverse health effects, because of a demonstrated lack of toxicity to mammals and the rapid digestibility of the PMI protein. It is expected that any PMI protein consumed will be digested as conventional dietary protein.

ii. *Drinking water*. Little to no exposure *via* drinking water is anticipated. Due to the demonstrated mammalian safety profile of PMI, such exposure would not present a risk.

2. *Non-dietary exposure*. Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure *via* dermal or inhalation routes is unlikely because the inert ingredient is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the PMI protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity of the PMI protein or the genetic material necessary for its production, it is reasonable to conclude that there will be no cumulative effects for this inert ingredient.

F. Safety Determination

1. *U.S. population*. The lack of mammalian toxicity at high levels of exposure to the PMI protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated *via* consumption of food products produced from *pmi*-transformed plants. Moreover, little to no human dietary exposure to PMI protein is expected to occur *via pmi*-transformed food crops. Due to the digestibility and lack of toxicity of the PMI protein, and its very low potential to become an allergen in food, dietary exposure is not anticipated to pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children*. Based on the mammalian safety profile of the inert ingredient and the proposed use pattern, there is ample evidence to conclude a reasonable certainty of no harm to infants and children.

G. Effects on the Immune and Endocrine Systems

The inert ingredient is derived from sources that are not known to exert an influence on the endocrine or immune systems.

H. Existing Tolerances

The registrant is not aware of any known existing tolerances or exemptions for PMI and the genetic material necessary for its production as an inert ingredient.

I. International Tolerances

The registrant is not aware that any Codex maximum residue levels exist for the PMI protein and the genetic material necessary for its production.

[FR Doc. 03–26412 Filed 10–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0034; FRL–7331–2]

Draft Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Inventory Database; Request for Comment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is convening a 1–day public meeting to receive comments from persons reporting data required by the Inventory Update Rule (IUR) on the draft instructions for reporting in 2006. The instructions have been revised in response to amendments to 40 CFR part 710 promulgated on January 7, 2003, which substantially modify the information which must be reported for the partial updating of the Toxic Substances Control Act (TSCA) Chemical Inventory Database beginning in 2006.

DATES: The public meeting will commence at 9:30 a.m. on Wednesday, October 22, 2003, and end at approximately 2 p.m.

ADDRESSES: The public meeting will be held at the Sheraton Suites Houston, 2400 West Loop South, Houston, TX 77027.

Persons planning to attend the public meeting are encouraged to register with the technical contact person identified below. Persons registering for the meeting will receive by e-mail a copy of the draft instructions prior to the meeting. Prior registration is not required to attend the public meeting.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Fredric C. Arnold, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460–0001; telephone number: (202) 564–8521; e-mail address: *arnold.fred@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture chemical substances currently subject to reporting under the IUR as amended on January 7, 2003, and codified as 40 CFR part 710. Persons who process chemical substances but who do not manufacture or import chemical substances are not required to comply with the requirements of 40 CFR part 710. Potentially affected entities may include, but are not limited to:

Chemical manufacturers and importers currently subject to IUR reporting, including manufacturers and importers of inorganic chemical substances (NAICS codes 325 and 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0034. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

EPA is convening a public meeting to receive comments on the instructions for reporting to the 2006 partial updating of TSCA Chemical Substance Inventory Database. EPA is required by section 8(b) of TSCA to compile and update an inventory of chemical substances manufactured or imported in the United States. Every 4 years, manufacturers (including importers) of certain chemical substances on the Chemical Substance Inventory have been required to report data specified in the TSCA section 8(a) IUR, 40 CFR part 710. Past updates included information on the chemical's production volume, site-limited status, and plant site information. Amendments to the IUR promulgated on January 7, 2003 (68 FR 848) (FRL–6767–4) expanded the data reported on certain chemicals to assist EPA and others in screening potential exposures and risks resulting from manufacturing, processing, and use of TSCA chemical substances. At the same time, EPA amended the IUR regulations to increase the production volume threshold, which triggers reporting requirements from 10,000 lbs per year to 25,000 lbs per year and established a new higher threshold of 300,000 lbs per year above which manufacturers must report additional information on down-stream processing and use of their chemical substances. The 2003 amendments to the IUR also revoked the exemption from reporting for inorganic chemical substances, provided a partial exemption from reporting of processing and use information for chemical substances of low current interest, and continued the current exemption from reporting for polymers, microorganisms, and naturally occurring chemical substances. These changes modify requirements for information collected in calendar year 2005 and submitted in 2006 and thereafter. The public meeting may be of interest to persons currently reporting under the IUR and to manufacturers of inorganic chemical substances.

The public meeting will include a series of presentations by representatives of EPA on the instructions for reporting for the 2006 partial updating of the TSCA Chemical Inventory Database. Presentation topics will include reporting requirements, instructions for completing the reporting form, how to assert confidentiality claims, and how to submit completed reports to EPA. After each presentation, persons attending the public meeting will be invited to comment on the clarity, completeness, and usefulness of the instructions. Comments may also be submitted in writing following the public meeting. Comments should be submitted within 30 days after the meeting to receive timely attention. The purpose of the public meeting is to receive input for improving the instructions; subsequent meetings are planned for 2004, to provide training to persons who must report in 2006, under the IUR.

There is no charge for attending this public meeting.

List of Subjects

Environmental protection, Chemicals, Reporting and recordkeeping requirements.

Dated: October 17,2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 03–26737 Filed 10–20–03; 2:26 pm]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–167; FCC 03–243]

Application by SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. for Authorization To Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio and Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc., (SBC) for authority to enter the interLATA telecommunications market in the states of Illinois, Indiana, Ohio and Wisconsin. The Commission grants SBC's application based on its conclusion that it has satisfied all of the statutory requirements for entry and opened its local exchange markets to full competition.

DATES: Effective October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Arluk, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1471 or via the Internet at *parluk@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–167, FCC 03–243, adopted October 14, 2003, and released October 15, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications*.

Synopsis of the Order

1. *History of the Application*. On July 17, 2003, SBC filed an application with the Commission, pursuant to section 271 of the Telecommunications Act of 1996, to provide in-region, interLATA services in the states of Illinois, Indiana, Ohio and Wisconsin.

2. *The State Commission's Evaluation*. The Illinois Commerce Commission (Illinois Commission), the Indiana Utility Regulatory Commission (Indiana Commission), the Public Utilities Commission of Ohio (Ohio Commission), and the Wisconsin Public Service Commission (Wisconsin Commission), following an extensive review process, advised the Commission that SBC has taken the statutorily required steps to open its local markets to competition. Consequently, the Illinois Commission, the Ohio Commission and the Wisconsin Commission recommended that the Commission approve SBC's in-region, interLATA entry in their evaluation and comments in this proceeding. The Indiana Commission, while it concluded that SBC is largely in compliance with section 271 requirements, it deferred to this Commission the ultimate determination of whether local markets have been fully and irreversibly open to competition, and whether SBC has demonstrated sufficient accuracy of its systems data and wholesale billing reliability.

3. *The Department of Justice's Evaluation*. The Department of Justice filed its evaluation on August 26, 2003, expressing concerns about SBC's wholesale billing, line splitting, manual handling, pricing and data reliability. The Department of Justice, while noting that SBC had made progress addressing some of the issues, stated that because of concerns about the billing processes, it could not support the application based on the current record. The Department, however, noted that the Commission might be able to resolve these billing issues prior to conclusion of its review.

4. *Compliance with Section 271(c)(1)(A)*. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B). The Commission concludes that SBC satisfies the requirements of Track A in Illinois, Indiana, Ohio and Wisconsin. This decision is based on the interconnection agreements SBC has implemented with competing carriers in each of the four states and the number of carriers that provide local telephone exchange service, either exclusively or predominantly over their own facilities, to residential and business customers.

Primary Issues in Dispute

5. *Checklist Item 1—Interconnection*. Based on its review of the record, the Commission concludes that SBC provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and prior Commission orders. In reaching this conclusion, the Commission examines SBC's performance with respect to collocation and interconnection trunks, as the Commission has done in prior section 271 proceedings. The Commission also examines whether SBC offers collocation and interconnection trunks to other telecommunications carriers at just, reasonable and nondiscriminatory rates. The Commission concludes that the commenters' allegations regarding SBC's collocation power rates in Indiana and Ohio do not require a finding of checklist noncompliance. The Commission determines that the revised collocation power rates made available to competitive LECs in Indiana and Ohio demonstrate that SBC provides collocation on a just, reasonable, and nondiscriminatory basis in compliance with checklist item one in Indiana and Ohio. In addition, the Commission waives its complete-as-filed requirement on its own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider SBC's revised collocation power rates.

6. *Checklist Item 2—Unbundled Network Elements*. Based on the record, the Commission finds that SBC has provided ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item two.

7. *Pricing of Unbundled Network Elements*. Based on the record, the Commission finds that SBC's UNE rates in Illinois, Indiana, Ohio and Wisconsin are just, reasonable and nondiscriminatory as required by section 251(d)(1). Thus, SBC's UNE rates satisfy checklist item two in all four states. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either ''basic TELRIC principles are violated or the state commission makes clear errors in the actual findings on matters so substantial that the end result falls outside the

range that a reasonable application of TELRIC principles would produce.'' The Illinois Commission, the Indiana Commission, the Ohio Commission, and the Wisconsin Commission all conducted extensive pricing proceedings to establish wholesale rates for UNEs. The Commission concludes that the fact that certain of the rates are interim in Illinois does not undermine SBC's showing that the rates satisfy checklist item two. The Commission also concludes that various ongoing litigation and challenges to rates adopted in Indiana, Illinois, and Ohio, do not preclude a determination that SBC is in compliance with section 271. The Commission has determined in previous orders that future rate uncertainty due to a pending appeal, without more, should not affect the Commission's review of the currently effective rates. The Commission also finds that the revised non-recurring charges (NRCs) for enhanced extended links (EELs) SBC submitted are reasonable interim rates. The Commission finds that the rates fall within the range SBC charges in other states, and that it expects the Illinois Commission to review the rates in the near future. In addition, the Commission waives its complete-as-filed requirement on its own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider SBC's revised EEL NRCs.

8. *Operations Support Systems (OSS).* Based on the evidence in the record, the Commission finds that SBC is providing competitors nondiscriminatory access to OSS in compliance with checklist item two. Pursuant to its analysis, the Commission finds that SBC provides non-discriminatory access to its OSS '' the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with SBC regarding basic activities such as placing orders and providing maintenance and repair services for customers. First, the Commission finds that SBC's data are, on the whole, reliable and accurate, based on the evidence in the record, including two independent, third-party audits of SBC's performance data. Second, the Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management), SBC provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as SBC does or, if no appropriate retail analogue exists within SBC's systems, in a manner that permits competitors a meaningful opportunity to compete. In particular, the Commission, assessing the totality of the circumstances, finds that SBC's evidence regarding billing demonstrates that competitive LEC concerns reflect only isolated instances or errors typical of high-volume carrier-to-carrier commercial billing, rather than systemic problems. The Commission thus finds that the allegations raised about billing in this record do not warrant a finding of checklist noncompliance because SBC's billing processes provide competitors a meaningful opportunity to compete. In addition, regarding specific areas for which the Commission identifies issues with SBC's OSS performance ''service order completion notices, line loss notification reports, billing completion notices, and access to IP addresses ''the Commission finds that these problems do not demonstrate overall discriminatory treatment or are not sufficient to warrant a finding of checklist noncompliance.

9. *Checklist Item 4—Unbundled Local Loops.* Based on the evidence in the record, the Commission concludes that SBC provides unbundled local loops in accordance with the requirements of section 271 and Commission rules. The Commission's conclusion is based on its review of SBC's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, and high-capacity loops, as well as the Commission's review of SBC's processes for hot cut provisioning, line sharing and line splitting. With respect to issues related to SBC's line splitting processes, the Commission notes that the commenters in this proceeding raise the same issues regarding SBC's line splitting policies that it raised in the recent proceeding regarding SBC's application to provide in-region, interLATA services in the state of Michigan. Accordingly, the Commission incorporates and references the *SBC Michigan II Order*, and finds that SBC's line splitting policies do not warrant a finding of checklist noncompliance.

Other Checklist Items

10. *Checklist Item 7—Access to 911/E911 and Operator Services/Directory Assistance.* Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide ''[n]ondiscriminatory access to 911 and E911 services.'' A BOC must provide competitors with access to its 911 and E911 services in the same manner that it provides such access to itself, *i.e.*, at parity. Specifically, the BOC ''must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.'' The Commission finds that SBC provides nondiscriminatory access to 911 and E911 services. Section 271(c)(2)(B)(vii) also requires a BOC to provide nondiscriminatory access to ''directory assistance services to allow the other carrier's customers to obtain telephone numbers'' and ''operator call completion services,'' respectively. Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC ''the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to * * * operator services, directory assistance, and directory listing, with no unreasonable dialing delays.'' Based on the Commission's review of the record it concludes that SBC offers nondiscriminatory access to its directory assistance services and operator services.

11. *Checklist Item 10—Databases and Signaling.* Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Based on the evidence in the record, the Commission finds that SBC provides nondiscriminatory access to databases and signaling networks in the states of Illinois, Indiana, Ohio and Wisconsin.

12. *Checklist Item 13—Reciprocal Compensation.* Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into ''[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).'' In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable. The Commission finds that the allegations AT&T raises with regard to reciprocal compensation pricing has already been appropriately raised before the Federal court, as Congress intended, where it is pending resolution. Under these circumstances, the Commission finds that such allegations do not require a finding of checklist noncompliance.

13. *Remaining Checklist Items (3, 5, 6, 8, 9, 11, 12 and 14).* Based on the evidence in the record, the Commission concludes that SBC demonstrates that it is in compliance with checklist item 3 (access to poles, ducts, and conduits), item 5 (unbundled transport), item 6 (unbundled switching), item 8 (white pages), item 9 (numbering administration), item 11 (number

portability), item 12 (dialing parity), and item 14 (resale).

14. *Section 272 Compliance.* Based on the record, the Commission concludes that SBC has demonstrated that it will comply with the requirements of section 272. Significantly, SBC provides evidence that it maintains the same structural separation and nondiscrimination safeguards in the four states as it does in Texas, Kansas, Oklahoma, Missouri, Arkansas, California, and Michigan.

15. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Illinois, Indiana, Ohio and Wisconsin today are open to competition. The Commission further finds that the record confirms its view, as set forth in prior section 271 orders, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. Finally, the Commission finds that SBC's performance plans in each of the four states provide assurance of future compliance.

16. *Section 271(d)(6) Enforcement Authority.* Working with the four state commissions, the Commission intends to closely monitor SBC's post-approval compliance to ensure that SBC continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Illinois, Indiana, Ohio and Wisconsin.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26794 Filed 10–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–3214]

North American Numbering Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 16, 2003, the Commission released a public notice announcing the November 5, 2003 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Wednesday, November 5, 2003, 9 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: October 16, 2003.

The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday, November 5, 2003, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Wednesday, November 5, 2003, 9 a.m.

1. Announcements and Recent News
—New NANC Charter
2. Approval of Minutes
—Meeting of September 25, 2003
3. Report of Cost Recovery Working Group
4. Report from NBANC
5. Report of NAPM, LLC
6. Status of Contamination Threshold IMG (final report due at March 16, 2004 NANC meeting)
7. Report from OUR regarding impact on Caribbean carriers of reclamation of ''paid toll free'' numbers on April 1, 2004
8. Report of 3-Digit DIG IMG
9. Discussion of Multiple LRNs Issue
—SBC technical presentation re cross-LATA boundaries
—INC's assignment practices
—NANPA's survey
10. Report of National Thousands Block Pooling Administrator
—Activity report
11. Status of Industry Numbering Committee (INC) activities
—Summary of VoIP Workshop and matrix
12. Report of Local Number Portability Administration (LNPA) Working Group
—Wireless Number Portability Operations (WNPO) Subcommittee
13. Report of the North American Numbering Plan Administrator (NANPA)
—CO Code Activity
—NPA Relief Report
14. Report of Numbering Oversight Working Group (NOWG)
—Change Order review
—Status of NANPA and PA annual reviews
15. Update List of NANC Accomplishments
16. Summary of Action Items
17. Public Comments and Participation (5 minutes per speaker)
18. Other Business

Adjourn no later than 5 p.m.

Next Meeting: January 13, 2004.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–26771 Filed 10–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item From October 16th Open Meeting

October 15, 2003.

The following item has been deleted from the list of Agenda items scheduled for consideration at the October 16, 2003, Open Meeting and previously listed in the Commission's Notice of October 9, 2003.

3.	Wireless Tele-Communications and International	Title: Auction of Direct Broadcast Satellite Licenses (AUC–03–52). Summary: The Commission will consider an Order to resolve issues raised in the Auction No. 52 Comment Public Notice related to the Commission's authority to auction Direct Broadcast Satellite (''DBS'') licenses and eligibility for the U.S. DBS licenses currently available.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26770 Filed 10–20–03; 12:42 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2635]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 9, 2003.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by November 6, 2003. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject:

Amendment of the Commission's Space Station Licensing Rules and Polices (IB Docket No. 02–34).

Mitigation of Orbital Debris (IB Docket 02–248).

Number of Petitions Filed: 7.

Subject:

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carries (CC Docket No. 01–338).

Implementation of the Local Competition Provision of the Telecommunications Act of 1996 (CC Docket No. 96–98).

Deployment of Wireless Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147).

Number of Petitions Filed: 9.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26619 Filed 10–21–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010776–124.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
APL Co. PTE Ltd.
Hapag-Lloyd Container Line GmbH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller-Maersk Sealand
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
P&O Nedlloyd B.V. and P&O Nedlloyd Limited.

Synopsis: The proposed agreement modification extends the suspension of the conference through May 1, 2004.

Agreement No.: 011798–002.

Title: Atlantic Space Charter Agreement.

Parties:

Hapag-Lloyd Container Linie GmbH
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
Orient Overseas Container Line (Europe)Limited
Orient Overseas Container Line Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Lykes Lines Limited LLC
TMM Lines Limited LLC
COSCO Container Lines Company, Ltd.
Kawasaki Kisen Kaisha, Ltd
Yang Ming (UK) Ltd.

Synopsis: The agreement reflects the name change of Dart ML Limited to Orient Overseas Container Line (Europe) Limited.

Agreement No.: 011815–002.

Title: Transpacific Space Charter Agreement.

Parties:

Hapag-Lloyd Container Linie GmbH
Nippon Yusen Kaisha
Orient Overseas Container Line Limited
Orient Overseas Container Line (Europe) Limited
Orient Overseas Container Line Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.

Synopsis: The agreement reflects the name change of Dart ML Limited to Orient Overseas Container Line (Europe) Limited.

Agreement No.: 011830–001.

Title: Indamex/APL Agreement.

Parties: Contship Containerlines

CMA CGM, S.A.
The Shipping Corporation of India, Ltd.
APL Co. PTE Ltd.
American President Lines, Ltd.

Synopsis: The proposed agreement modification reflects changes in the number and size of the vessels used in the Indamex service and deletes obsolete language.

Agreement No.: 201149.

Title: Port Inland Distribution Network Service Agreement

Parties:

Port of New York and New Jersey, Port of Albany.

Synopsis: The agreement will provide for the implementation and funding of a feeder barge service between the Port of New York and New Jersey and the Port of Albany.

By Order of the Federal Maritime Commission.

Dated: October 17, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–26683 Filed 10–21–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Meeting Act Notice

TIME AND DATE: 12 noon, Monday, October 27, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments,

reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 17, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26715 Filed 10–20–03; 9:31 am]

BILLING CODE 6210–01–U

OFFICE OF GOVERNMENT ETHICS

Updated OGE Senior Executive Service Performance Review Board

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the updated OGE Senior Executive Service (SES) Performance Review Board.

EFFECTIVE DATE: October 22, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel D. Dunning, Deputy Director for Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: (202) 482–9300; TDD: (202) 208–9293; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.310 thereof in particular, one or more Senior Executive Service performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, the designated members of OGE's SES Performance Review Board are being drawn, as in the past, largely from the ranks of other agencies. The board shall review and evaluate the initial appraisal of each OGE senior executive's performance by his or her supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. This notice updates the membership of OGE's SES Performance Review Board as it was last published at 66 FR 57106 (November 14, 2001).

Approved: October 16, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

The following have been selected as regular members of the SES Performance Review Board of the Office of Government Ethics:

Marilyn L. Glynn [Chair], General Counsel, Office of Government Ethics;
John J. Covaleski, Deputy Director for Agency Programs, Office of Government Ethics;
Joseph E. Gangloff, Senior Counsel, Office of International Affairs, Department of Justice;
Rosalind A. Knapp, Deputy General Counsel, Department of Transportation;
Steven Y. Winnick, Deputy General Counsel, Department of Education.

[FR Doc. 03–26655 Filed 10–21–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amendment of Statement of Organization Functions and Delegations of Authority for the Office for Human Research Protections

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This amendment revises the description of the immediate Office of the Director, Office for Human Research Protections (OHRP), to include support functions for the Secretary's Advisory Committee on Human Research Protections; changes the name and expands the functions of the former Division of Policy Planning and Special Projects; expands the functions of the Division of Education and Development; and dissolves the current Division of Assurances and Quality Improvement.

Part A, Office of the Secretary (OS), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS), Chapter AC, Office of Public Health and Science (OPHS), Office for Human Research Protections (OHRP), as last amended at 67 FR 10216, dated March 6, 2002, is being amended as follows:

I. Amend Part L, subpart 1, as follows:

A. Delete ''and'' before ''(8),''

B. Delete ''.'' at the end of subpart 1,

C. Add to the end of subpart 1 the following:

; and (9) provides staff support for the Secretary's Advisory Committee on Human Research Protections.

II. Amend Part L, subpart 2, by deleting it in its entirety and replacing it with the following:

2. Division of Policy and Assurances (ACN 2)—(1) Maintains, develops, promulgates, and updates policy and guidance documents regarding regulatory requirements and ethical issues for biomedical and behavioral research involving human subjects; (2) coordinates appropriate DHHS regulations, policies and procedures with other Departments and agencies in the Federal Government; (3) organizes and coordinates consultations with panels of experts for research involving prisoners and children, when required by DHHS regulations for the protection of human subjects at 45 CFR 46.306 and 46.407, respectively; (4) coordinates responses to requests for information, technical assistance, and guidance from Congress, other DHHS agencies, other Federal Departments and agencies, and non-governmental entities; (5) coordinates responses to requests for OHRP documents and information under the Freedom of Information Act; (6) Negotiates Assurances of Compliance with research entities; (7) provides liaison, guidance, and regulatory interpretation to research entities, investigators, Federal officials, and the public; (8) maintains and modifies, as necessary, existing assurance mechanisms; and (9) operates and maintains a registration system for institutional review boards; and (10) develops and implements new procedures to ensure that DHHS human subjects protection regulations are appropriately and effectively applied to the changing needs of the research community.

III. Amend Part L, subpart 4 by deleting it in its entirety and replacing it with the following:

4. Division of Education and Development (ACN4)—(1) Develops and conducts education conferences, workshops and other training tools, and quality improvement activities to improve protections for human research subjects; (2) provides liaison to Federal officials and guidance and regulatory interpretation to research entities, investigators, and the public regarding ethical issues in biomedical and behavioral research involving human subjects; (3) provides technical assistance to institutions engaged in

DHHS-conducted or sponsored research involving human subjects; (4) maintains, promulgates, and updates educational guidance materials and quality improvement activities and materials related to protection of human research subjects; (5) conducts public outreach and education or information programs to promote and enhance public awareness of the activities of OHRP and human subject protections; and (6) provides staff support to the Human Subjects Research Subcommittee, Committee on Science, National Science and Technology Council.

VI. Amend Part L, subpart 5 by deleting it in its entirety.

G. Effective Date: The foregoing amendments to the organization and functions of the Office for Human Research Protections are effective immediately.

Dated: October 14, 2003.

Cristina V. Beato,

Acting Assistant Secretary for Health.

[FR Doc. 03–26627 Filed 10–21–03; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Partners Invited To Participate in Steps to a HealthierUS

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) seeks to work with other public and private sector organizations to support a new Federal initiative to promote better health for all Americans. This initiative is called *Steps to a HealthierUS* and is part of the President's HealthierUS Initiative to help Americans live longer, better, and healthier lives. This *Steps Partnership* initiative is not a grant or contract award program and each partner will be responsible for supporting its own activities. Working together, it is intended that these partnerships will provide innovative opportunities to promote healthier living and successfully promote the principles and efforts of the *Steps* initiative. More information about *Steps* is available at: *http://www.healthierus.gov/steps/.* Partnerships are not limited to any existing list of priority projects.

DATES: Comments expressing or affirming an interest in the *Steps to a HealthierUS Partnerships* initiative will be most useful if received within three months of the publication of this notice. Contact identification information to permit further discussion and consideration of ideas of mutual interest may be sent to either the street address or the email address set out in the next paragraph.

ADDRESSES: Expressions of interest, comments and questions may be sent to the following email address, *StepsPartnerships@osophs.dhhs.gov,* or by regular mail with contact information, as appropriate, to: Steps to a HealthierUS Partnerships, c/o Office of Public Health & Science, U.S. Department of Health and Human Services, 200 Independence Avenue SW, Room 738G, Washington DC 20201.

Organization representatives may also call the following information line: 1(800) 631–0926. Callers will be directed to appropriate agency officials or to other collaborating partners with similar or complementary interests for further discussions.

SUPPLEMENTARY INFORMATION: HHS is the United States government's principal agency for promoting and protecting the health of all Americans. HHS manages many programs, covering a broad spectrum of health promotion and disease prevention services and activities. Leaders in the business community, State and local government officials, tribes and tribal entities and charitable, faith-based, and community organizations have expressed an interest in partnering with the Department to promote healthy choices and behaviors. The Secretary welcomes this interest. With this notice, the Secretary outlines opportunities for these and other entities to partner with HHS, in order to address health promotion and chronic disease prevention and control activities. The *Steps* program will be carried out consistent with HHS's broad statutory authorities found in 42 U.S.C. 238, 241, 280e-11, 280h-280h-3, and 300u-300u-3 and, in some cases, pursuant to more particular, pertinent Public Health Service Act provisions or other HHS program statutes.

In recent years, the public has become more aware of the burden of illness and death caused by chronic diseases such as asthma, cancer, diabetes, heart disease, obesity, and stroke—and of the connection between these chronic diseases and lifestyle choices involving tobacco use, improper diet, and lack of exercise. Despite this new understanding and awareness, more than 1.7 million Americans die of a chronic disease each year, accounting for about 70% of all U.S. deaths. In addition, more than 175 million Americans live with chronic conditions, with millions of new cases diagnosed each year. These serious diseases are often treatable, but not generally curable. Thus, the Secretary believes it is important and timely for the Nation to increase prevention efforts to fight chronic disease.

The *Steps to a HealthierUS* initiative focuses on *both* health promotion and chronic disease prevention and control through the following activities:

1. Community-based education programs highlighting steps that can be taken to prevent or reduce the incidence of chronic diseases;
2. Health promoting programs and environments in school, worksite, faith-based and community-based settings;
3. Improved access to preventive, diagnostic and treatment services;
4. The elimination of racial, ethnic, and socioeconomic-based health disparities;
5. Improved delivery of evidence-based clinical preventive services and chronic disease management; and
6. Evaluation of chronic disease prevention and health promotion interventions.

Introduction

Federal health promotion and chronic disease prevention goals cannot be achieved without

(a) Change in individual behavioral practices and change in organizational cultures and actions, both based on increased knowledge and understanding;

(b) Optimal utilization of preventive or treatment services; along with

(c) Improvement in prevention, diagnostic, and treatment technologies and systems.

HHS has limited resources with which to achieve implementation of large-scale nationwide changes. Moreover, to achieve such societal changes, the involvement of both public and private organizations is necessary. For efforts of this magnitude, the Department periodically invites outside organizations to join in carrying out activities of mutual interest to achieve shared objectives. These partnerships are voluntary. The parties work together to carry out their respective, consistent missions for the common good.

Collaboration With Public and Private Sector Organizations

In order to implement the *Steps* nationwide initiative, HHS is interested in establishing partnerships with private corporations and other entities, including charitable, faith-based, and community organizations, as well as with State and local governments, that can help extend the program's reach to all Americans. In accordance with each entity's particular strengths and

abilities, partnerships will be established; each partner will be responsible for providing the resources necessary to carry out specified activities of mutual interest.

As partners with HHS, both public and private sector organizations can bring their respective ideas and expertise, administrative capabilities, and production and material resources, that are consistent with the goals of the *Steps* initiative, to, for example:

(a) Share in the development of educational health information and its distribution to employees or to the public, *e.g.*, promoting healthy lifestyles to prevent chronic diseases, programs aimed at improving consumers' understanding of how proper dietary choices and physical activity can improve health and prevent obesity and other chronic diseases or providing practical guidance and information on how to obtain diagnostic and treatment services. Public education efforts could include Web-site and software development, work with local or national media, and sponsorship of health promotion events, each activity generally enhancing consumer understanding of health information related to health promoting behaviors and chronic disease prevention and control;

(b) Foster the creation and maintenance of effective health and wellness and physical activity programs that provide clear measurable results;

(c) Participate in the development of health professional educational activities, including conference co-sponsorship or co-publication and dissemination of professional educational materials, such as reports of proceedings and any resulting recommendations; and

(d) Conduct or support chronic disease prevention research, or undertake scientific testing and evaluation of commercial products related to the Steps initiative, such as interactive computer software and media tools.

Partnership agreements will make clear that there will be no Federal endorsement of commercial products or of particular companies. HHS will have a right to review the use of Department logos and statements related to *Steps* on such materials and products to ensure that they are suitable for the initiative and that government neutrality with respect to commercial products is maintained. When the *Steps* logo is approved for use on commercial materials or products that promote healthier lifestyles or foster other *Steps* objectives and are incorporated in *Steps* initiative activities, a disclaimer will be required to be printed on, or affixed to commercial partner materials and products indicating that the use of the logo does not imply any Federal endorsement or warranty of a particular commercial product or of other products of a particular company.

Evaluation Criteria

After engaging in exploratory discussions of potential partnerships and partnership activities with respondents, the following considerations will be used by HHS officials, as appropriate and relevant, to determine whether HHS will engage in partnership activities with particular entities and the scope of those activities.

1. Are the activities proposed by the offering entity likely to provide a substantial public health benefit, consistent with HHS goals and the *Steps to a HealthierUS* Initiative?

2. Does the proposed partnership's potential for public health benefit outweigh any potential negative impact on the agency and its ability to accomplish its missions? What adjustments if any, would make the proposal acceptable?

3. Is there an identifiable and appropriate role for HHS?

4. Does the outside entity have the expertise and capacity to carry out its proposed activities?

5. Has the outside entity demonstrated a willingness to work collaboratively with other public and private sector organizations to achieve the stated *Steps to a HealthierUS* goals or to advance related efforts, activities, or initiatives?

Given the *Steps* Initiative's objectives, entities who have similar goals and consistent interests, appropriate expertise and resources, and would like to pursue chronic disease prevention and health promotion activities within their own organizations, or on a broader scale, in collaboration with the Department, are encouraged to reply to this notice. Working together, it is intended that these partnerships will provide innovative opportunities to promote healthier living.

Dated: October 16, 2003.

Cristina V. Beato,

Acting Assistant Secretary for Health.

[FR Doc. 03–26628 Filed 10–21–03; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, November 7, 2003, from 9 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Building, Department of Health and Human Services (HHS), 200 Independence Avenue, Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850, (301) 427–1215. For press-related information, please contact Karen Migdail at (301) 427–1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144 no later than October 31, 2003.

Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 540 Gaither Road, Rockville, Maryland, 20850. Her phone number is (301) 427–1554. Minutes will be available after November 21, 2003.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve the outcomes, reduce the costs of health care services, improve access to such services through scientific

research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Service and Federal ex-officio members.

II. Agenda

On Friday, November 7, 2003, the meeting will begin at 9 a.m., with the call to order by the Council Chair. The Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include a discussion of Improving Efficiency and Quality through Health System Design, AHRQ's Efforts Directed to Improve Decisions Regarding the Purchase, Cost, and Effectiveness of Prescribed Medicines, the National Healthcare Qualtity Report, and the National Healthcare Disparities Report. The official agenda will be available on AHRQ's Web site a *http://www.ahrq.gov* no later than October 17, 2003. The meeting will adjourn at 4 p.m.

Dated: October 14, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–26567 Filed 10–21–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0465]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—General Considerations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—General Considerations.'' The draft guidance discusses general issues common to all types of electronic regulatory submissions and updates the guidance of the same name, issued in January 1999. The update now includes information for the Center for Devices and Radiological Health (CDRH), the Center for Food Safety and Applied Nutrition (CFSAN), and the Center for Veterinary Medicine (CVM) and reflects advances in technology as well as lessons learned from experience with electronic submissions received over the past several years.

DATES: Submit written or electronic comments on the draft guidance by December 22, 2003. 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 Training and Communications, Division of Communications Management, Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), 5600 Fishers Lane, Rockville, MD 20857, or 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, Rockville, MD 20852–1448, or to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit telephone requests to 800–835–4709 or 301–827–1800. 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.

FOR FURTHER INFORMATION CONTACT:

Randy Levin, Food and Drug Administration, CDER (HFD–140), 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411, *levinr@cder.fda.gov*, or

Michael Fauntleroy, Food and Drug Administration CBER (HFM–025), 1401 Rockville Pike, Rockville, MD 20852, 301–827–5132, or

Stuart Carlow, Food and Drug Administration, CDRH (HFZ–040), 2098 Gaither Rd., Rockville, MD 20850, 301–594–4550, or

JoAnn Ziyad, Food and Drug Administration CFSAN (HFS–206), 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3116, or

Elizabeth Parbuoni, Food and Drug Administration, CVM (HFV–16), 7519 Standish Pl., Rockville, MD 20835, 301–827–4621.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—General Considerations.'' The draft guidance discusses general issues common to all types of electronic regulatory submissions and updates the guidance of the same name, which was issued in January of 1999. The update now includes information for CDRH, CFSAN, and CVM and reflects advances in technology as well as lessons learned from experience with electronic submissions received over the past several years. Changes from the 1999 version of the draft guidance include a new section describing the relationship of electronic submissions to 21 CFR part 11. There are updates on the recommendations for creating portable document format documents including specific guidance for the use of fonts. New file formats for data, specifically extensible markup language and standardized markup language are introduced. The electronic transmission of files is discussed.

This draft guidance is being issued as a level 1 guidance, consistent with FDA's regulation on good guidance practices regulation (21 CFR 10.115). It represents the agency's current thinking on ''Providing Regulatory Submissions in Electronic Format—General Considerations.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Copies of this draft guidance for industry are available on the Internet at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, and *http://www.fda.gov/cvm/guidance/guidance.html*.

Dated: October 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26571 Filed 10–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms—(OMB No. 0915–0043)—Revision

This clearance request is for a revision of the approval for three HEAL forms: the HEAL Repayment Schedule, Fixed and Variable (provides the borrower with cost of a HEAL loan, the number and amount of payments, and the Truth-in-Lending disclosures); and the Lender's Report on HEAL Student Loans Outstanding, Call Report (provides information on the status of loans outstanding by the number of borrowers whose loan payments are in various stages of the loan cycle, such as student education and repayment, and the corresponding dollar amounts). These forms are needed to provide borrowers with information on the cost of their loan(s) and to determine which lenders may have excessive delinquencies and defaulted loans.

The estimate of burden for the forms is as follows:

Form and number	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Disclosure: Repayment Schedule HRSA 502–1, 2	15	666	9,990	.5	4995
Reporting: Call Report, HRSA 512	20	4	80	.75	60
Total Reporting and Disclosure	20		10,070		5,055

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 15, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–26573 Filed 10–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education Payment Program: Final Policies on Withholding and Reconciliation Process and Methodology for Calculating Reconciliation Payments, Use of Wage Index in Calculating Indirect Medical Education Payments, Dissemination of Program Data, and Audit; Updates on Calculation of National Per Resident Amount and Government Performance and Results Act Measures

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final notice.

SUMMARY: This notice adopts policies for the Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) regarding the CHGME PP withholding and reconciliation process and calculation of reconciliation payments, use of the wage index to calculate CHGME PP indirect medical education (IME) payments, dissemination of CHGME PP data, and audits. This notice also provides updates and clarification on the CHGME PP calculation of a national per resident amount and CHGME PP compliance with Government Performance and Results Act (GPRA) measures.

DATES: This notice is effective November 21, 2003. See discussion under Supplemental Information.

FOR FURTHER INFORMATION CONTACT: Ayah E. Johnson, Ph.D., Chief, Graduate Medical Education Branch, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–1058 or e-mail address *ChildrensHospitalGME@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The CHGME PP, as authorized by section 340E of the Public Health Service Act (42 U.S.C. 256e) (the Act), provides funds to children's hospitals that operate graduate medical education (GME) programs. Pub. L. 106–310 amended the CHGME PP statute to continue the program through Federal fiscal year (FFY) 2005.

On September 25, 2002, the Secretary published a notice in the **Federal Register** (67 FR 60241) clarifying hospital eligibility criteria for the CHGME PP. That notice also sought public comments on proposals for (1) establishing a methodology to determine direct medical education (DME) and IME payments during the withholding and reconciliation processes stipulated in the CHGME PP statute; (2) updating the wage index used in the calculation of IME payments; (3) disseminating CHGME PP data; and (4) auditing.

During the comment period, the Department received comments from six interested parties, including hospitals and professional associations. The Secretary thanks the respondents for the quality and thoroughness of their comments. As a result of these comments, the Department has made revisions and clarifications in this final notice. The comments and Department's responses to the comments, as well as the final rules are set forth below. Subsequent to the publication of this notice, CHGME PP policies will be codified.

As indicated in the September 25 **Federal Register** notice, an updated listing of children's hospitals potentially eligible to participate in the CHGME PP will be posted on the CHGME PP Web site (*http://bhpr.hrsa.gov/childrenshospitalgme*), during the third quarter of each year.

Effective dates. To the extent this notice reiterates or clarifies past practices of the CHGME program, those policies continue in effect. To the extent

this notice creates new duties and obligations which cannot be directly drawn from the statute, the effective date shall be November 21, 2003.

Final Provisions

The Department is finalizing the following provisions: (1) Methodology for withholding DME and IME payments and determining reconciliation payments as stipulated in the CHGME PP statute; (2) updating of the wage index used in calculating lIME payments; (3) dissemination of CHGME PP data; and (4) audit.

In its September 25, 2002 **Federal Register** notice, the Department proposed for public comment its methodology for the withholding and reconciliation of CHGME PP payments as stipulated by statute. The Department proposed to withhold up to 25% of both DME and lIME payments to ensure that hospitals did not receive overpayment. It also proposed a methodology to determine reconciliation payments using changes in FTE resident counts that occur during the Federal fiscal year (FFY) for which payments are being made.

In the same **Federal Register** notice, the Department also proposed that the most recently available wage index (WI) be used in the determination of IME payments. To date, the Department had been using the FY 1999 WI published by the Centers for Medicare and Medicaid Services (CMS) to determine IME since its use is statutorily mandated in the determination of DME.

The Department also proposed that each hospital could request its own information (*i.e.*, its application information and information used to determine payments) from the CHGME PP but would need to request all other information (*e.g.*, information for other hospitals or for all hospitals) through the HRSA Freedom of Information Act (FOIA).

Finally, the Department proposed that the 0MB A–133 review requirements originally imposed on hospitals participating in the CHGME PP be replaced with an assessment conducted by an outside contractor familiar with Medicare policies of the FTE resident counts.

A description of the Department's final policies on these issues as well as the public comments and the Department's response is included in the following sections.

I. Withholding and Reconciliation Processes and Methodology for Calculating Reconciliation Payments

The Department is finalizing the methodology for withholding children's hospitals DME and IME payments to reduce the likelihood that a hospital is overpaid on an interim basis, determining revised full time equivalent (FTE) resident counts, and calculating reconciliation payments described in the September 25, 2002 **Federal Register** notice. The CHGME PP began implementing this methodology beginning with the payments it awarded to children's hospitals issued in Federal Fiscal Year (FFY) 2002.

Withholding Process

The CHGME PP statute, as amended, states that ''the Secretary shall withhold up to 25% from each interim (payment) installment for direct and indirect graduate medical education * * * as necessary to ensure a hospital will not be overpaid on an interim basis.'' The statute also indicates that, prior to the end of each FFY, the Secretary must determine any changes to the number of FTE residents reported by a hospital in its annual initial application for CHGME PP funding. This determination by the Secretary will be used to calculate the final amount payable to that hospital for the FFY. Funding withheld during the interim period will be allocated to children's hospitals following the determination by the Secretary of any changes to the number of FTE residents reported by participating hospitals. The Secretary has statutory authority to reconcile FTE resident counts only. It should be noted, however, that the Secretary does have the discretion to audit any and all variables used to determine CHGME PP payments to children's hospitals.

Reporting Revised Resident Counts

To assess the impact of payment resulting from the FTE assessment process, during the third quarter (March 1–June 30) of each FFY for which payments are being made, the CHGME PP will release a reconciliation application for use by participating hospitals to report changes in the FTE resident counts reported in their initial applications. The reconciliation application will include forms HRSA–99 (Hospital Demographics), HRSA–99–1 (Reconciliation of FTE resident counts), HRSA 99–2 (Determination of Indirect Medical Education Data), HRSA–99–3 (Certification), and HRSA–99–4 (Required Data Reporting for Government Performance and Results Act). This collection of information has been approved under 0MB Information Collection No. 09 5–0247. Hospitals will have 30 days to complete and return the reconciliation application. If a hospital fails to complete and return the reconciliation application according to the terms and conditions of the CHGME PP, the Department may suspend the award, pending corrective action, or may terminate the award for cause.

Hospitals that were not eligible to participate or did not apply for funding during the initial application cycle are not eligible to apply for and receive funding during the reconciliation process. These hospitals must wait until the next initial application cycle to apply.

Determining Changes in FTE Resident Counts

Hospitals will report revised FTE resident counts to the CHGME PP by submitting a complete reconciliation application. Any changes to resident FTE counts reported on the reconciliation application must be for the same Medicare cost report (MCR) period(s) identified in the hospital's initial application for the FFY. Hospitals whose resident counts have not changed are not exempt from completing and submitting a CHGME PP reconciliation application. For purposes of clarification, an FTE resident is measured in terms of time worked during a residency training year. It is not a measure of individual residents who are working.

Prior to FFY 2003, assessment of FTE resident counts was done by the Medicare fiscal intermediaries (FIs) for the subset of children's hospitals that filed full MCRs. The Secretary has established an assessment process that will ensure this determination is made for FTE resident counts submitted by all children's hospitals. Beginning in FFY 2003, the CHGME PP is contracting with FIs to assess the FTE resident counts submitted by participating hospitals in their FFY 2003 initial CHGME PP application. This assessment of FTE resident counts will be performed for all hospitals regardless of the type of MCR they file (*e.g.*, full, low or no utilization). This process is designed to assess FTE resident counts for all children's hospitals within the CHGME PP time constraints in an equitable fashion. The resident FTE counts reported by the hospitals in their reconciliation application must be consistent with those reported by the hospital's CHGME FI to be accepted by the Department. The Department will provide final review and determination of the hospitals' FTE counts. The reconciliation process requires that participating hospitals comply with requests from the CHGME PP FI. The CHGME PP has placed a guidance document providing further information about the FTE resident count assessment on the program's Web site

(*http://bhpr.hrsa.gov/childrenshospitalgme*).

Comment: One respondent noted that the Department should seek FI review of hospitals' resident counts and reporting of those counts consistent with the review for a given point in time and that the FIs should not be required to attest to hospitals' resident counts. The respondent noted that such an attestation suggests that the FI could be held legally liable for a hospital's error in resident counts even though the FI is not responsible for the maintenance and accuracy of the hospital's records. In addition, the review of resident counts reflects those counts at a point in time: The counts may be subject to change over time due to a variety of factors such as a cost report re-opening.

Response: The Department will not require the CHGME FIs to attest to a hospital's FTE resident count but instead will require a review of the FTE resident counts. This review will be based on the FTE resident counts submitted by the hospitals with their initial application for funding in a particular FFY. It will reflect the hospitals' FTE resident counts at a point in time just prior to the submission of the hospitals' reconciliation application. The hospital's reconciliation application must be consistent with the results of this CHGME PP FI FTE resident count assessment. The Department also recognizes that these FTE resident counts may change over time.

Comment: One respondent commented that although the Department should contract with FIs to provide independent review of resident counts for the CHGME PP, the hospitals should be able to have the same FI providing both the review and processing of their MCR and the assessment of resident FTE counts for their CHGME PP application.

Response: In developing a contract with the FIs to assess the FTE resident counts training in children's hospitals, the Department made every effort to ensure that the same FI would work with the hospital on both their MCR and their CHGME PP application. However, not all FIs chose to participate in the CHGME PP FTE resident assessment contract and, as a result, some hospitals will have different FIs reviewing their MCR and their CHGME PP application. It is important to note that the prime contractor for Medicare and the CHGME PP is the same. As a result, communications are facilitated between the Medicare and CHGME PP FIs in instances where the two are different entities. In those instances where a children's hospital has one FI for Medicare and one for CHGME PP, information and FTE assessment results will be shared between both FIs.

Determining Revised Resident Counts for ''New Children's Teaching Hospitals''

New children's teaching hospitals'', as defined by the CHGME PP in its July 20, 2001 **Federal Register** notice, do not include those hospitals with a newly approved residency training program as described in 42 CFR 413.86(g)(6)(i). These ''new children's teaching hospitals'' will calculate FTE resident counts for the reconciliation application process using the methodology proposed in the September 25 **Federal Register** notice. This proposed methodology provides that the hospital would calculate its FTE resident counts in one of two ways:

1. If a hospital has filed a Medicare cost report (MCR) by the CHGME PP reconciliation application deadline, the hospital would report the actual number of resident FTEs trained during that cost reporting period;

2. If a hospital has not filed an MCR by the CHGME PP reconciliation application deadline, the hospital would determine the FTE residents training at the hospital from the beginning of the FFY for which payments are being made up to the reconciliation application deadline. The revised FTE resident count will equal the average number of FTE residents trained per day during this period multiplied by the total number of days the hospital will be training residents during the FFY for which payments are being made. In the event that a ''new children's teaching hospital'' counts residents in excess of its FTE resident cap as a result of an affiliation agreement with one or more other hospitals, it is important to note that the total number of FTE residents counted by members of the affiliated group cannot exceed the aggregate FTE cap for member hospitals. ''New children's teaching hospitals'' will report these updated FTE resident counts on form HRSA 99–1 of the reconciliation application.

Determining IME Payments for ''New Children's Teaching Hospitals''

All hospitals, including ''new children's teaching hospitals,'' must submit a complete reconciliation application. In completing form HRSA 99–2 (Indirect Medical Education) in the reconciliation application, ''new children's teaching hospitals'' will use the methodology described in the September 25 **Federal Register** notice. Those hospitals that have not filed an MCR or completed a full Medicare cost reporting period will use the timeframe from the beginning of the FFY for which payments are being made up to the reconciliation application deadline date to determine the estimates needed to complete the form.

Reconciliation Payment Process

The Secretary will determine any balance due or any overpayment made to individual hospitals following the determination of changes, if any, to the number of residents reported by hospitals in their reconciliation applications. Hospitals will be notified, in writing, of the Secretary's final reconciliation payment determination during the fourth quarter (July 1–September 30) of the FFY in which payments are being made.

Hospitals that have been notified of an overpayment will have 30 days to return the overpayment to the Department without accrual of interest. Hospitals that fail to return overpayments within the specified timeframe will accrue and be responsible for any interest.

Reconciliation payments will be made to individual hospitals on or before the end of the FFY (September 30) in which payments are being made. The Secretary will include in the reconciliation payments all funding initially withheld from the hospital as a result of withholding required by statute. At the end of the FFY, the CHGME PP may make a final payment to distribute any remaining funds, including those funds that have been returned to the Department during the course of the FFY as a result of overpayment or hospitals' loss of eligibility.

All hospitals, whether or not they report changes to their resident FTE resident counts during the reconciliation process, can expect changes to their final payment determination as a result of FTE resident count changes reported by other participating hospitals. This is due to the methodology used to determine CHGME PP payments. Payments to individual hospitals are based upon the hospital's share of the total amount of DME and IME funding available for a given FFY. A hospital's portion of the total DME and IME funding available is calculated based on payment variables in the CHGME PP statute and regulations. This individual hospital portion (the numerator) is then divided by the sum of all hospitals' portions (the denominator) to determine the share of the total available funding to be distributed to the hospital. Hence, although an individual hospital's FTE resident count and subsequent portion (numerator) may not change at the time

of the reconciliation application process, the denominator of the payment calculation may change as a result of changes in FTE resident counts reported by other hospitals. More detailed information is available on the CHGME PP payment formulas in the June 19, 2000 **Federal Register** notice (DME payment formula) and the July 20, 2001 **Federal Register** notice (IME payment formula). Information on the payment formulas is also available on the CHGME PP Web site *http://bhpr.hrsa.gov/childrenshospitalgme/.*

As provided by statute, for disputes greater than $10,000, a hospital may request a hearing on the Secretary's payment determination by the Provider Reimbursement Review Board under section 1878 of the Social Security Act (42 U.S.C. 1395oo), implemented by regulations at 42 CFR part 405, subpart R.

It should also be noted that the reconciliation process does not take the place of a separate audit process to which the hospitals may be subject. Participating children's hospitals are subject to audit (other than OMB Circular A–133 as described in section IV below) to determine whether the applicant hospital has complied with applicable laws, regulations, and its application for funding.

Comment: One respondent requested that the interest rate charged by the Government be published.

Response: Interest will be accrued at a rate set on a quarterly basis by the Secretary of the Treasury pursuant to 45 CFR 30.13.

II. Updating the Wage Index in Calculation of Indirect Medical Education Payment

The Department has determined that it will continue to use the wage index (WI) determined by the Centers for Medicare and Medicaid Services (CMS) for fiscal year (FY) 1999 to calculate the indirect medical education (IME) payment for children's hospitals. In its September 25, 2002 **Federal Register** notice, the CHGME PP proposed that the wage index (WI) from the most recent fiscal year available be used to calculate IME payments. Although the CHGME PP statute states that the factor applied under section 1886(d)(3)(E) of the Social Security Act (*i.e.*, the wage index calculated by the Centers for Medicare and Medicaid Services) for discharges occurring during fiscal year 1999 for the hospital's area be used in the calculation of direct medical education (DME) payments, the Secretary has discretion to choose the WI used in the calculation of IME payments. Since the statute specifies the use of the FY 1999 WI to determine DME, however, the use of the WI from the most recent fiscal year available to calculate IME payments would result in two different WI being used to determine the CHGME PP payments to children's hospitals. After consideration of the public comments on this topic, the Department has determined that it will continue to use the wage index (WI) determined by the Centers for Medicare and Medicaid Services (CMS) for fiscal year (FY) 1999 to calculate the indirect medical education (IME) payment for children's hospitals. In using the WI to determine CHGME PP payments for both DME and IME, the Secretary will use the most recently available Medicare PPS labor-related (and non-labor-related) share; currently, the PPS labor-related share is 71.1%.

Comment: Several respondents expressed concern regarding use of the updated CMS WI because of current Congressional efforts to make substantive changes in the determination of the CMS WI. As the outcome of these efforts (*i.e.*, if and when a bill is passed) and the resulting implications for recalculation of the WI by CMS are not clear, the respondents encouraged the CHGME PP to postpone implementation of this policy.

Response: Since its inception, determination of the WI has been subject to change both at the Congressional and Department level. Given this ongoing iterative process and the lack of statutory directive regarding the use of WI in the calculation of IME, the Department has determined that it will continue to use the WI from FY 1999 to calculate the IME payment.

Comment: One respondent was concerned about the potential confusion that could result from using two different WI values, one for DME and one for lIME, to determine payments for the participating hospitals.

Response: The Department recognizes the potential confusion that using two different WI values could create among hospitals participating in the CHGME PP. In order to prevent such confusion, the WI from FY 1999 will continue to be used to calculate IME.

Comment: One respondent commented that it may be more appropriate to postpone the implementation of the proposed WI policy until it could be assessed in light of the findings of the ongoing analytic activities related to the CHGME PP IME payment formula.

Response: The Department agrees that it may be best to introduce any changes to the IME payment formula simultaneously and not in an incremental fashion. It should be noted, however, that the payment formulas used by the program may be subject to statutory amendment.

III. Dissemination of CHGME PP Data

The Department considers all CHGME PP information obtained by the program in hospital applications and generated by the program to determine payments to be fully disclosable; that is, its release to the public poses no potential harm to the hospital(s) that originally submitted the Program application. The Department is finalizing the following procedure for the dissemination of information related to the CHGME PP.

Each hospital participating in the CHGME PP may request its own hospital-specific data related to the CHGME PP through a written request to the CHGME PP. Contact information is provided earlier in this notice.

All other requests for information (*e.g.,* information requested about another participating hospital or all participating hospitals) must be submitted to the Freedom of Information Act (FOIA) Officer for the Health Resources and Services Administration (HRSA). The HRSA FOIA Office address is 5600 Fishers Lane, Room 14–45, Rockville Maryland 20857.

In addition, the CHGME PP will follow the policies regarding fees and charges associated with release of information as stated in 45 CFR part 5, subpart D.

IV. Audit

In the March 1, 2001 **Federal Register** notice, the Department announced that awards under the CHGME PP must be audited under Office of Management and Budget (OMB) Circular A–133. The Department has reconsidered its position with respect to this requirement, and is making final the policy proposed in the September 25 **Federal Register** notice that CHGME PP awards are not subject to review/audit under OMB Circular A–133. This policy will be in effect beginning with the FFY 2003 CHGME PP application.

The relevant compliance requirements that the Department needs for the CHGME PP are the FTE resident counts reported on the initial and reconciliation applications for the Program. Since the Secretary must account for change in the number of FTE residents prior to the close of each FFY, the Department is required to assess FTE resident counts per the applications prior to the end of each FFY for all CHGME PP participating hospitals. The Department has established a process to assess the FTE resident counts submitted by children's

hospitals in their applications for funds from the CHGME PP. The process is based on the assessment process utilized by CMS in their review of FTE resident counts submitted on MCR. The process will be implemented by Department contractors familiar with both CMS procedures and CHGME PP requirements.

The Department believes this approach is more effective than an audit/review under OMB Circular A–133, as it provides the Department up-front assurance on the reconciliation of FTE resident counts as mandated in statute. Excluding the CHGME PP from the definition of Federal awards expended under OMB Circular A–133 removes a potential duplication of effort that would result from an auditor testing FTE counts that the Department has already verified, and may allow these audit resources to be used to test other Federal programs of higher risk.

Comment: Several respondents commented that the elimination of the requirement for compliance with OMB Circular A–133 should be made retroactive.

Response: The compliance reviews under OMB Circular A–133 will have been initiated and/or completed for FFYs 2000–2002 prior to the finalization of the Department's policy on this issue. As a result, the Department is not in a position to make the elimination of this compliance requirement retroactive. The Department policy will become effective with the FFY 2003 funding cycle. Furthermore, the comprehensive FTE resident count assessment process undertaken by the Department was not in place prior to FFY 2003.

Clarification of Provisions

The Department wishes to clarify its current rules related to the calculation of a national per resident amount for determining CHGME PP payments and the measures used by the CHGME PP to be in compliance with the Government Performance and Results Act (GPRA).

V. Calculation of National Per Resident Amount

The CHGME PP statute specifies the calculation of a baseline national per resident amount (NPRA) using FFY 1997 data. As amended, the statute also specifies that this baseline amount should be updated annually using the estimated percentage increase in the consumer price index (CPI) for all urban consumers during the period beginning October 1997 and ending with the midpoint of the federal fiscal year for which payments are made. The NPRA is used in the calculation of DME payments.

The March 1, 2001 **Federal Register** notice indicated that the NPRA for cost reporting periods ending in FFY 1997, using the methodology prescribed by the CHGME PP statute, is $67,688. This amount has only been updated by the program once to date. As published in the March 1, 2001 **Federal Register** notice, the updated amount for FFY 2000 was estimated at $71,709. Since the NPRA appears as the same number in both the individual hospital portion (numerator) and the sum of all hospitals' portions (denominator) used to determine DME payments, it doesn't affect the calculation of payments; as a result, the update has not been performed annually.

Beginning with FFY 2002, the NPRA will be updated annually using the methodology included in the statute. The updated amount will be posted on the CHGME PP Web site (*http://bhpr.hrsa.gov/childrenshospitalgme*) in the third quarter of each year. For FFY 2002, the updated NPRA is estimated at $74,890—determined by applying the percent increase in CPI from October 1997 to April 2002 to the baseline NPRA from FFY 1997.

VI. Government Performance and Results Act (GPRA) Measures

In order to be in compliance with the GPRA, the CHGME PP collects information on a series of measures determined by the Department in its annual performance plan. These performance measures are developmental and are subject to periodic modification. In the future, the CHGME PP will post annual updates of its GPRA performance measures on the CHGME PP Web site (*http://bhpr.hrsa.gov/childrenshospitalgme*).

The following measures are being used by the Department to evaluate the performance of the CHGME PP for FFY 2003: (1) Maintain the number of FTE residents in training in eligible children's teaching hospitals; (2) Report the percentage of hospitals funded by the program with negative total margins; and (3) Report the proportion of hospitals' gross revenue from patient care attributed to public insurance (Medicaid, Medicare, SCHIP) and uninsured patients.

Other Applicable Laws, Executive Orders, and Policies

Economic and Regulatory Impact: Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). In addition, under the Regulatory Flexibility Act (RFA) of 1980, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives of costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

In accordance with the RFA and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this action will have a significant effect on a substantial number of small entities, in that this action will provide significant funding to eligible children's hospitals. The Department has determined that the only burden this action will impose on children's hospitals is the allocation of resources required to submit an application to the CHGME PP. Since this action will not impose a significant burden on a substantial number of small entities, the Department has not examined any alternatives for reducing the burden on children's hospitals. The Secretary has also determined that this action does not meet criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures.

The Department has determined that the proposed rule is not a major rule within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, the proposed rule will not have effects on State, local and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Further, Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. The Department has reviewed this action under the threshold criteria of Executive Order 13132, Federalism, and has determined that this action would not have substantial direct effects on the

rights, roles, and responsibilities of States.

Paperwork Reduction Act of 1995

In accordance with section 3507(a) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments and receive final 0MB approval on collections of information. In order to implement the CHGME PP, certain information is required, as set forth in this notice, in order to determine eligibility for payment and amount of payment. In accordance with the PRA, we have received final 0MB approval on the collection of information for the reconciliation procedures beginning in the FFY 2002 cycle (0MB No. 0915–0247).

Collection of Information: The Children's Hospitals Graduate Medical Education Payment Program.

Description: Data is collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

Description of Respondents: Children's hospitals operating approved graduate medical residency training programs.

Estimated Annual Reporting: The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
HRSA–99–1	54	1	99.9	5,395
HRSA99–1 (Reconciliation of FTE counts)	54	1	8	432
HRSA99–2	54	1	14	756
HRSA–99–4	54	1	28	1,512
Total	54			8,095

Education and Service Linkage: As part of its long-range planning, HRSA will be targeting its efforts to strengthen linkages between Department education programs and programs that provide comprehensive primary care services to the underserved.

Smoke-Free Workplace: The Department strongly encourages all award recipients to provide a smoke-free workplace and promote abstinence from all tobacco products, and Pub. L. 103–227, the ProChildren Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: September 2, 2003.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Dated: October 16, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–26626 Filed 10–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: November 12, 2003, 9 a.m.—5 p.m.; November 13, 2003, 8:30 a.m.—3 p.m.

Place: The Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037, (202) 872–1500.

Status: The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs that are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010.*

Agenda: Topics that will be discussed include the following: Low-Birth Weight and Preterm Birth, Racial Disparities, Border Health, and the Healthy Start Program. Agenda items are subject to change as priorities are further determined.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr.P.H., HRSA, Maternal and Child Health Bureau, telephone (301) 443–6327.

Dated: October 15, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–26572 Filed 10–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: November 6, 2003, 8:30 a.m.–5 p.m.; November 7, 2003, 8:30 a.m.–3 p.m.

Place: The St. Regis Hotel, 923 16th Street at K Street NW., Washington, DC 20006.

Status: The meeting will be open to the public.

Agenda: Department, Agency, Bureau, and Division administrative updates will be provided. The Council will address issues related to performance measures and outcomes in the implementation of the Nurse Reinvestment Act and other Title VIII grant programs. A panel on Interdisciplinary Education to Promote Patient Safety and Quality of Care will be presented by Division of Nursing and Division of Medicine sponsored grantees. Division of Nursing and Bureau of Health Professions presentations of performance measures and outcomes will follow. The Council will consider the Gallup Poll Results of Federal Advisory Committees. Council workgroup sessions will provide a forum to discuss presentations before Council and develop recommendations related to performance outcomes.

The NACNEP will comment on the Third Report to the Secretary of the Department of Health and Human Services and the Congress.

For Further Information Contact: Any one interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, M.S., R.N., Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: October 15, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–26574 Filed 10–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors, Board of Scientific Advisors.

Date: November 13–14, 2003.

Time: November 13, 2003, 8 a.m. to 6 p.m.

Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Time: November 14, 2003, 8:30 a.m. to 1 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Acting Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Exective Boulevard, 8th Floor, Rm. 8141, Bethesda, MD 20892, 301–496–4218.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26590 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Targets for Nutrients in Prostate Cancer Prevention.

Date: November 13–14, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, 301/594–1286, *peguesj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26591 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 15, 2003, 6:00 PM to October 17, 2003, 12:00 PM, The Belvedere Hotel, 319 West 48th Street, New York, NY, 10036 which was published in the **Federal Register** on August 26, 2003, 68 FR 51282.

This meeting is amended due to the change of the meeting location to W Hotels of New York, 130 East 39th Street, New York NY 10016. The meeting is closed to the public.

Dated: October 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26595 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Preclinical Toxicology and Pharmacology of Drugs Developed for Cancer, AIDS and AIDS-Related Illnesses.

Date: November 6, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 10892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26602 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Basic Science.

Date: October 20–21, 2003.

Time: 8: a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale Birkle, Ph.D., Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd, Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkles@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel HIV/AIDS.

Date: October 29, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William A. Kachadorian, Ph.D., MTS, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary, Alternative Medicine, 6707 Democracy Blvd, Ste 106, Bethesda, MD 20892–5475, (301) 594–2014, *kachadow@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Training/Education.

Date: November 7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Carol Pontzer, Ph.D., Scientific Review Administrator, National Center for Complementary, and Alternative Medicine, 6707 Democracy Blvd., Bethesda, Md 20892.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel PAR 03–102.

Date: November 19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dale Birkle, PhD., Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd, Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel CAM and Oncology.

Date: November 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol Pontzer, Ph.D., Scientific Review Administrator, National Center for Complementary, and Alternative Medicine, 6707 Democracy Blvd., Bethesda, Md 20892.

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26597 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Small Grants for Pilot Research (R03).

Date: November 17–18, 2003.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892, (301) 451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26607 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 582(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Innovative Grants on Immune Tolerance.

Date: November 10–12, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Somerset Room, Chevy Chase, MD 20815.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID/NIH, 6700B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, (301) 496–2550, pm158b@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26592 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: November 12, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 03.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26593 Filed10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Training Applications.

Date: November 7, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Mentored Clinical Scientist Development Awards (K08s).

Date: November 19, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific

Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Mentored Quantitative Research Career Development Awards (K25s).

Date: November 19, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26594 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee. AIDS Research Review Committee.

Date: November 6–7, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH, 6700B Rockledge Drive, Rm 3130, Bethesda, MD 20892–7616, 301–496–7966, *rb169n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26596 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Specialized Cooperative Centers Program in Reproduction Research.

Date: November 17–18, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26599 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Sciences Subcommittee.

Date: November 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26600 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Child Care and Youth Development.

Date: November 13–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26601 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis—Panel Support of NIGMS Program Project Grants.

Date: November 19–20, 2003.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Copley Place Hotel, 10 Huntington Avenue, Boston, MA 02116.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26603 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee A.

Date: November 4–5, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26604 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Pilot Projects for Models of Infectious Disease Agent Study (MIDAS).

Date: November 12–13, 2003.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select-Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: N. Kent Peters, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18B, Bethesda, MD 20892, (301) 594–2408, *petersn@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26605 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group Neuroscience of Aging Review Committee.

Date: November 7–8, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, New Orleans Airport, 2929 Williams Blvd., Kenner, LA 70062.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666, *hsul@exmur.nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26606 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel R24 Application.

Date: November 4, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2860.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 DD (03) K05 Application Review.

Date: November 24, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Room 409, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26608 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee.

Date: October 30–31, 2003.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Hotel George, 15 ''E'' Street, NW., Washington, DC 20001.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26609 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–15. Review of RFA DE04–003.

Date: November 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–4861.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–18. Review of R03 Grants.

Date: November 19, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm. 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–20. Review of RFA DE–04–002.

Date: November 21, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial RES, 45 Center Drive, Natcher Building, Rm 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–19, Review of R44 Grants.

Date: November 24, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DmD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–10, Review of R44s.

Date: November 25, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DmD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–20, Review of R44s.

Date: December 5, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DmD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26610 Filed 10–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel R01 Grant Review.

Date: November 18, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, Phd, MD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26598 Filed 10–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Administrative Rulings

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:

Administrative Rulings: This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a 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** (68 FR 19560) on April 21, 2003, 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 November 21, 2003.

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: Administrative Rulings.

OMB Number: 1651–0085.

Form Number: N/A.

Abstract: This collection is necessary in order for CBP to respond to requests by importers and other interested persons for the issuance of administrative rulings regarding the interpretation of CBP laws with respect to prospective and current transactions.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 12,200.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 128,000.

Estimated Total Annualized Cost on the Public: $12,800,000.

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 202–927–1429.

Dated: October 15, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–26618 Filed 10–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Approval Procedures for Nontoxic Shot and Shot Coatings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A summary of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before November 21, 2003.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information or related forms, contact Anissa Craghead at (703) 358–1730, or electronically to *anissa_craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the nontoxic shot approval process. We are requesting a 3-year term of approval for this information collection activity.

On March 24, 2003, we published a notice in the **Federal Register** (68 FR 14257) inviting public comment for 60 days on this information collection requirement. No comments were received. This notice provides an

additional 30 days in which to comment on the following information.

Federal agencies 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. The OMB control number for this collection of information is 1018–0067.

The Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities include approval of nontoxic shot materials for use in hunting waterfowl and coots in the United States.

As of January 1, 1991, lead shot was banned for hunting waterfowl and coots in the United States. At that time, steel shot was the only nontoxic alternative available. Since then, we have encouraged manufacturers to develop other alternatives that the hunting public may use. In approving a candidate material as nontoxic for hunting waterfowl and coots, we must first ensure that secondary exposure (ingestion of spent shot or its components) is not a hazard to migratory birds and the environment. In order to make this decision, we require the applicant to collect information about the toxicity of their candidate material to migratory birds and the environment. A further requirement pertains to law enforcement. A noninvasive field detection device must be available to distinguish the candidate shot from lead shot. The above information provides the bulk of an application for approval of nontoxic shot material. Once a candidate material is approved as nontoxic, there is no seasonal or annual information collection requirement.

Title: Approval Procedures for Nontoxic Shot and Shot Coatings.

OMB Control Number: 1018–0067.

Frequency of Collection: Occasional (upon application).

Description of Respondents: Shot manufacturers.

Total Annual Responses: We expect no more than one application per year.

Total Annual Burden Hours: The reporting burden is estimated to average 3,200 hours per application. Therefore, if we receive one application per year, the total annual burden hours would amount to 3,200 hours.

We again invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (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. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: August 25, 2003.

Paul R. Schmidt,

Assistant Director, Migratory Birds and State Programs.

[FR Doc. 03–26568 Filed 10–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–134–1610–DP–006C]

Notice of Availability of a Draft Resource Management Plan and Environmental Impact Statement for the Colorado Canyons National Conservation Area, Grand Junction Field Office in Mesa County

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, and the Federal Land Policy and Management Act (FLPMA) of 1976, the BLM has prepared a Draft Resource Management Plan/Environmental Impact Statement (DRMP/EIS) for the Colorado Canyons National Conservation Area (CCNCA) and is available for a 90-day public review and comment period. The planning area lies in Mesa County, Colorado and Grand County, Utah. The DRMP/EIS provides direction and guidance for the management of public lands and resources of the CCNCA, as well as monitoring and evaluation requirements, and impact analysis of the alternatives. The CCNCA RMP will amend the Grand Junction (CO) Resource Area Resource Management Plan (1987) and the Grand (UT) Resource Area Resource Management Plan (1985).

DATES: Written comments on the DRMP/EIS will be accepted for 90 days following the date that the Environmental Protection Agency publishes this notice in the **Federal Register**. Future public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, local media news releases, the project Web site at *http://www.co.blm.gov/cocanplan/,* and/or mailings.

ADDRESSES: Written comments should be sent to: Jane Ross, 2815 H Road, Grand Junction, Colorado 81506. Comments also may be sent by e-mail to *Jane_Ross@co.blm.gov.* Written comments, including names and addresses of respondents, will be available for public review at the offices of the BLM Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506, during normal working hours (7:30 a.m. to 4:30 p.m., except holidays). Submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. Responses to the comments will be published as part of the Proposed Resource Management Plan/Final Environmental Impact Statement.

The DRMP/EIS and other associated documents or background information may be viewed and downloaded in PDF format at the project Web site at *http://www.co.blm.gov/cocanplan/.* Copies of the DRMP/EIS are available at the BLM Grand Junction Office at the address above, and at the BLM Moab (UT) Field Office, 82 E. Dogwood, Moab, UT 84532. Copies are also available at the following Mesa County Public Library District locations during regular business hours:

Central Library, 530 Grand Avenue, Grand Junction, CO 81501;

Fruita Branch, 325 East Aspen Avenue, Fruita, CO 81521;

Palisade Branch, 711 Iowa Street, Palisade, CO 81526;

Clifton Branch, Peachtree Shopping Center, 3225 I–70 Business Loop A–1, Clifton, CO 81520;

Orchard Mesa Branch, 2736 Unaweep Avenue, Grand Junction, CO 81503.

The planning documents and direct supporting record for the analysis for the DRMP/EIS will be available for inspection at the BLM Grand Junction Field Office during normal working hours, 7:30 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Jane Ross (970) 244–3027, Planning and Environmental Coordinator (*jane_ross@co.blm.gov*), or Greg Gnesios at (970) 244–3049 (*gregory_gnesios@co.blm.gov*), Colorado Canyons NCA Manager, Bureau of Land Management, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506.

SUPPLEMENTARY INFORMATION: The RMP will amend the Grand Junction RMP (1987) and may amend the Grand Resource Area [UT] RMP for the affected lands in the planning area. Some decisions in the existing planning and management documents may be carried forward into the new CCNCA RMP. Once approved in a Record of Decision (ROD), the RMP for the CCNCA will supercede all existing management plans for the public lands within the CCNCA. The DRMP/EIS evaluates the Existing Management Alternative, the Agency Preferred Alternative, and two other management alternatives developed for the CCNCA.

The CCNCA was officially designated on October 24, 2000, when the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 was signed into public law by the President. The purpose of the Act is to conserve, protect, and enhance, for the benefit and enjoyment of both present and future generations, the nationally important values of the public lands making up the CCNCA, including the Black Ridge Canyons, Ruby Canyon, and Rabbit Valley. The CCNCA, located west of Grand Junction, includes 122,300 rugged acres of sandstone canyons, natural arches, spires, and alcoves carved into the Colorado Plateau along a 24-mile stretch of the Colorado River. Included in the CCNCA are 75,550 acres of wilderness designated as the Black Ridge Canyons Wilderness. At the western boundary of the CCNCA, 5,200 acres stretch into eastern Utah.

The DRMP/EIS analyzes four alternatives that are summarized below. Preliminary issues identified by the BLM and used for developing alternatives include: (1) Travel management; (2) recreation; (3) use authorizations such as rights-of-way and grazing; (4) management of natural resources; (5) wilderness management; (6) integration of the CCNCA Management Plan with other agency and community plans; and (7) consideration of private property in the planning area. Some of the issues that have been identified in the scoping process phase of the CCNCA planning process include: motorized and non-motorized vehicle use, allocation of commercial recreation use, water quality, land health, threatened and endangered and special status species and critical habitat protection, reintroduction of native species, and noxious weed control. Other factors considered include recreation and resource use, protection of scenic values, the level and intensity of dispersed and developed recreation management, cultural resource protection and interpretation, public access, transportation and utility corridors, and woodland product harvest.

The public collaboration program implemented for this effort included the formation of a ten-member Advisory Council and four public collaboration working groups, three public open houses, the distribution of two newsletters, and also included workshops, training courses and field trips. During this process over 100 meetings were held with the public, during which 17 planning criteria were developed to help ensure consideration of issues important to the public. Planning criteria also include laws, regulations, policy, and other guidance. The complete list of the planning criteria can be found on the planning Web site at *http://www.co.blm.gov/cocanplan/*.

Alternative 1 is the no-action, or ''continuation of existing management'' alternative, that leaves all management of the area in its current management situation as guided by the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000, the Ruby Canyon/Black Ridge Wilderness Integrated Management Plan, the Grand Junction Resource Area Resource Management Plan, The Interim Management Policy for BLM National Monuments and National Conservation Areas, and the Colorado State Director's Guidance for the CCNCA.

Alternative 2, the Recreation Emphasis Alternative, maximizes multiple-use, recreation opportunities while conserving and protecting traditional uses and protecting natural resources to the maximum extent possible. Objectives for Alternative 2 include preserving and enhancing traditional recreation activities—hiking, camping, mountain biking, OHV use, horseback riding, hunting, boating, backpacking; maintaining current land health and improving priority areas of concern using a higher percentage of non-native species as necessary to stabilize soils; and concentrating activities in certain areas as a method to control use and resource impacts and minimize dispersed resource impacts.

Alternative 3, the Adaptive Management and Agency Preferred Alternative, emphasizes maintaining the current level of enjoyment of the area's recreational opportunities and unique characteristics while recognizing that increased future use will trigger the need for increased levels of management. Monitoring for land health and visitors' beneficial experience will determine when increased levels of management are required. Objectives for this alternative include preserving the character of the area; preserving and enhancing traditional recreation activities—hiking, camping, mountain biking, OHV use, horseback riding, hunting, and boating; and maintaining land health and improving priority areas of concern.

Alternative 4, the Conservation Emphasis Alternative, focuses on maximizing the conservation of natural resources in the CCNCA while still maintaining traditional uses and recreational opportunities to the greatest extent possible. Objectives for this alternative include improving land health in all areas of concern, preserving the character of the area, and expanding education and interpretation opportunities in all areas.

Dated: August 22, 2003.

Gregory Gnesios,

Manager, Colorado Canyons National Conservation Area.

[FR Doc. 03–26649 Filed 10–21–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Navajo National Monument, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement for the General Management Plan, Navajo National Monument.

SUMMARY: Pursuant to National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service announces the availability of a Final Environmental Impact Statement for the General Management Plan, Navajo National Monument, Arizona.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental

Protection Agency of the notice of availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public review in the office of the Superintendent, Navajo National Monument, HC 71, Box 3, Tonalea, Arizona 86044–9704, and at the following locations: On the Internet at: *http://www.nps.gov/planning/nava.* Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 987–6671.

FOR FURTHER INFORMATION CONTACT: Contact Roger Moder, Superintendent, Navajo National Monument at the above address and telephone number.

Dated: August 8, 2003.

Michael D. Snyder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 03–26579 Filed 10–21–03; 8:45 am]

BILLING CODE 4312–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Section 10), notice is hereby given that the Concessions Management Advisory Board (the Board) will hold its tenth meeting Tuesday, October 28 through Thursday, October 30, 2003. The meeting will be held at the Doubletree Grand Key Resort located at 3990 S. Roosevelt Boulevard, Key West, Florida 33050. The meeting will convene at 8:30 a.m. and will conclude at 4:30 p.m. each day.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Parks Omnibus Management Act of 1998, November 13, 1998 (Public Law 105–391). The purpose of the Board is to advise the Secretary and the National Park Service (NPS) on matters relating to management of concessions in the National Park System.

The Board will meet at 8:30 a.m. for the regular business meeting to discuss the following subjects:

- Discussion of final recommendations regarding Leasehold Surrender Interest
- Discussion of General Accounting Office report to Congress on NPS titled, ''Agency Needs to Better Manage the Increasing Role of Nonprofit Partners''
- Panel Discussion: Environmental Management Strategies in Concession Operations
- Follow-up group reports on:
  —Revised contracting regulations
  —Commercial Use Authorizations
  —Handcrafts
- Discussion of contents of the Board's next report to Congress
- Site visit to Dry Tortugas National Park and presentation of Commercial Services Plan
- Agenda and date of next meeting

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service , assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as a necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Board during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, attention: Manager Concession Program at least 7 days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C St. NW. (2410), Washington, DC 20240, Telephone: (202) 513–7144.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Concession Program Office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

Dated: September 17, 2003.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 03–26578 Filed10–21–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from Rio Arriba County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Navajo Nation, Arizona, New Mexico and Utah.

In 1945, human remains representing a minimum of one individual were removed by Edward T. Hall, Jr., from a site in the Gobernador area of Rio Arriba County, NM. The human remains were discovered on the surface, apparently washed out of a canyon wall rock burial. The human remains were accessioned by the American Museum of Natural History in 1945. No known individual was identified. No associated funerary objects are present.

The American Museum of Natural History catalog description identifies the human remains as ''probably Navajo.'' Scholarly publications and consultation with representatives of the Navajo Nation, Arizona, New Mexico and Utah indicate that canyon wall rock burials were a typical Navajo practice during the historic period. Oral tradition and archeological and historical evidence confirm that the Gobernador area of Rio Arriba County, NM, was

occupied by the Navajo during the early historic period.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico and Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before November 21, 2003. Repatriation of the human remains to the Navajo Nation, Arizona, New Mexico and Utah may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Navajo Nation, Arizona, New Mexico and Utah that this notice has been published.

Dated: August 19, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–26581 Filed 10–21–03; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Essex Museum, Salem, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Essex Museum, Salem, MA, that meet the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 20 cultural items are 2 masks, 2 cornhusk masks, 3 miniature masks, 4 feather wands, 2 turtle rattles, 2 gourd rattles, 2 wooden forks, 1 drum stick, 1 water drum and stick, and 1 wampum message stick.

In December 1944, the Peabody Essex Museum received a mask (Accession E24970) that Ernest Dodge had purchased in October 1944. Museum records indicate that the mask was collected from the Six Nations Reserve, Ontario, Canada.

In 1949, the Peabody Essex Museum received a mask (Accession E27945) as an exchange with Dr. Frank G. Speck. Museum records indicate that the mask was collected from the Six Nations Reserve, Ontario, Canada.

In December 1944, the Peabody Essex Museum received a cornhusk mask (Accession E24971) that Ernest Dodge had purchased in October 1944. Museum records indicate that the mask was collected from the Six Nations Reserve, Ontario, Canada.

On August 22, 1946, the Peabody Essex Museum purchased a cornhusk mask (Accession E26299) from Dr. Frank G. Speck. Museum records indicate that the mask was collected from the Six Nations Reserve, Ontario, Canada.

On December 28, 1944, the Peabody Essex Museum purchased three miniature masks (Accessions E25197, E25198, and E25199) from Dr. Frank G. Speck, who had collected the masks in or about 1932 from the Six Nations Reserve, Ontario, Canada.

On December 28, 1944, the Peabody Essex Museum received three feather wands (Accession E25205) from Dr. Frank G. Speck, who had collected the wands at an unknown date from the Six Nations Reserve, Ontario, Canada.

On September 8, 1948, the Peabody Essex Museum received a feather wand (Accession E27760) from Dr. Frank G. Speck, who had collected the wand at an unknown date from the Six Nations Reserve, Ontario, Canada.

On December 28, 1944, the Peabody Essex Museum purchased a turtle rattle (Accession E25206) from Dr. Frank G. Speck, who had obtained the rattle in or about 1933 from the Six Nations Reserve, Ontario, Canada.

In December 1944, the Peabody Essex Museum received a turtle rattle (Accession E24972) that Ernest S. Dodge had purchased in October 1944. Museum records indicate that the rattle was collected from the Six Nations Reserve, Ontario, Canada.

On December 22, 1944, the Peabody Essex Museum received a gourd rattle (Accession E24984)

that Ernest S. Dodge had purchased in October 1944. Museum records indicate that the rattle was collected from the Six Nations Reserve, Ontario, Canada.

On May 10, 1961, the Peabody Essex Museum received a gourd rattle (Accession E37486) as a gift from Mrs. Sterling H. Pool. Records of the donor note that the origin of the rattle is ''Cayuga, Can.≥

On December 28, 1944, the Peabody Essex Museum purchased two wooden forks (Accession E25203) from Dr. Frank G. Speck, who had obtained the forks in 1935 from the Six Nations Reserve, Ontario, Canada.

On December 28, 1944, the Peabody Essex Museum purchased a drum stick (Accession E25217) from Dr. Frank G. Speck, who had obtained the drum stick on an unknown date from the Six Nations Reserve, Ontario, Canada.

At an unknown date, the Peabody Essex Museum purchased a water drum and stick (Accession E25216) from Dr. Frank G. Speck, who had obtained the drum and stick in 1945 from the Six Nations Reserve, Ontario, Canada.

Evidence presented during consultation by representatives of the Cayuga Nation of New York and museum documentation indicate that the cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

The Cayuga people have, over time, moved, and today live in three main areas: in and around Versailles, NY; at the Six Nations Reserve in Ontario, Canada; and at the Seneca-Cayuga Reservation in Oklahoma. The Cayuga Nation of New York has informed the Peabody Essex Museum that the tribe may act on behalf of the Cayuga community of Canada in this matter.

Officials of the Peabody Essex Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 19 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Peabody Essex Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Cayuga Nation of New York.

On December 28, 1944, the Peabody Essex Museum (then the Peabody Museum) purchased a wampum message stick (Accession E25262) from Dr. Frank G. Speck, who had obtained the message stick in 1945 from the Six Nations Reserve, Ontario, Canada. The item consists of a small wooden stick to which are attached four shell wampum beads and a piece of red ribbon. Museum records indicate that the object is Cayuga.

Evidence presented during consultation by representatives of the Cayuga Nation of New York and museum documentation indicate that the cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated by any individual tribal member.

The Cayuga people have, over time, moved, and today live in three main areas: in and around Versailles, NY; at the Six Nations Reserve in Ontario, Canada; and at the Seneca-Cayuga Reservation in Oklahoma. The Cayuga Nation of New York has informed the Peabody Essex Museum that the tribe may act on behalf of the Cayuga community of Canada in this matter.

Officials of the Peabody Essex Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual, and could not have been alientaed, appropriated, or conveyed by any individual. Officials of the Peabody Essex Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Cayuga Nation of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects or object of cultural patrimony should contact John R. Grimes, Curator of Native American Art and Culture, Peabody Essex Museum, East India Square, Salem, MA 01970, telephone (978) 745–9500, before November 21, 2003. Repatriation of the sacred objects and object of cultural patrimony to the Cayuga Nation of New York may proceed after that date if no additional claimants come forward.

The Peabody Essex Museum is responsible for notifying the Cayuga Nation of New York and Seneca-Cayuga Tribe of Oklahoma that this notice has been published.

Dated: August 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–26580 Filed 10–21–03; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

American Basin Fish Screen and Habitat Improvement Project, Sacramento River, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report and notice of scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Reclamation (Reclamation) proposes to participate in a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the American Basin Fish Screen and Habitat Improvement Project (ABFS). The ABFS is being proposed by the Natomas Mutual Water Company (NMWC), a private mutual water company. The California Department of Fish and Game (CDFG) will be the lead agency under the California Environmental Quality Act (CEQA). The purpose of the ABFS is to improve passage conditions for migratory fish species in segments of the lower Sacramento River and Natomas Cross Canal adjacent to the American Basin, to improve aquatic and riparian habitat conditions in the project area, and to prevent entrainment of resident and migratory fish species in unscreened water diversions.

DATES: A public scoping meeting will be held on November 20, 2003, from 6:30 to 8:30 p.m. in Sacramento, California.

Written comments on the project scope should be sent to the ABFS at the address below by December 4, 2003.

ADDRESSES: The public scoping meeting will be held at the Residence Inn by Marriott, located in the South Natomas area of Sacramento, at 2410 West El Camino Avenue.

Written comments on the project scope should be sent to the American Basin Fish Screen and Habitat Improvement Project, c/o Stephen Sullivan, Mead & Hunt, Inc., 3327 Longview Drive, Suite 100, North Highlands, CA 95660.

FOR FURTHER INFORMATION CONTACT: John Robles, Environmental Specialist with the Bureau of Reclamation at (916) 978–5050 or James Navicky, Environmental Scientist with California Department of Fish and Game at (916) 358–2030.

SUPPLEMENTARY INFORMATION: NMWC is a private mutual water company subject to local land use controls, including those of Sacramento and Sutter counties and the City of Sacramento. The service area of the NMWC includes the entire Natomas Basin, and NMWC controls surface water rights for over 280 landowners within the 55,000-acre Natomas Basin. NMWC diverts water from the Sacramento River [generally between River Mile (RM) 79 and RM 61] and the Natomas Cross Canal to provide irrigation water for agricultural uses and habitat preservation.

NMWC currently maintains five pumping plants along the Sacramento River and the Natomas Cross Canal. These pumping plants divert surface water from the Sacramento River and Natomas Cross Canal into the NMWC service area. The five pumping plants maintain a total maximum water diversion capacity of 630 cubic feet per second (cfs). There are also several local landowners within the Natomas Basin that are diverting irrigation water from the Sacramento River into the Natomas Basin through small privately owned pumps.

Drainage and flood control for the Natomas Basin is provided by Reclamation District 1000 (RD 1000), a public agency that has a coinciding service area with the NMWC and several joint use facilities.

Irrigation water is distributed primarily throughout the service area using NMWC's system of highline canals. NMWC also uses the RD 1000 drainage canal system to distribute water within the service area. Sacramento River water is pumped into the drainage canal system to be commingled with tailwater. This water is then relifted into the highline canal system or delivered directly into the fields.

The ABFS is necessary to avoid and/or minimize potentially adverse effects to at-risk fish species, including listed and proposed species, that inhabit or otherwise use these watercourses during various life stages, and to ensure the reliability of NMWC's water diversion and distribution facilities so that water supplies for agricultural use, habitat preservation, and habitat maintenance, including winter flooded waterfowl habitat, will continue. The habitat created through the operation of NMWC irrigation facilities provides habitat for at-risk species such as the state and federally-listed giant garter snake and the state-listed Swainson's hawk, as well as other species. Seasonal flooding

of rice fields for rice straw decomposition provides wetland habitat for various local and migratory waterfowl.

The ABFS has been developed to address concerns regarding the health of local fish species. At various times of the year and various life stages, the lower Sacramento River and Natomas Cross Canal are inhabited by numerous fish species, including such state and federally-listed species as the winter-run chinook salmon, spring-run chinook salmon, Central Valley steelhead, Sacramento splittail, delta smelt, and other at-risk species. These fish species, particularly anadromous salmonids (those fish that live as adults in salt water and spawn in fresh water) use the Sacramento River and Natomas Cross Canal as part of their migration corridor for upstream migration of spawning adults and downstream migration of rearing juveniles. Many of the fish species of concern that use these rivers have declined in population during the last few decades as a result of various stress factors.

The ABFS would maintain the existing NMWC diversion capacity of 630 cfs, and include the following improvements to NMWC facilities under all action alternatives:

- Decommissioning and removal of the existing Verona Diversion Dam and lift pumps;
- Removing the five pumping plants (two along the Natomas Cross Canal and three along the Sacramento River) and several small diversions operated by local landowners;
- Constructing one, or two new diversion facilities with fish screens;
- Modifications to the distribution system, including regrading of existing canals and drains, the construction of new irrigation canals and drains, and modifications to drainage canals to redistribute flows from the new diversion locations;
- Additional capacity for the internal relift pumps at RD 1000 Pumping Plant No. 3 in place of the removed Riverside Pumping Plant;
- Regrading the Riverside Main Highline Canal from RD 1000 Pumping Plant No. 3 to the existing Riverside Pumping Plant;
- Upgrading of two control structures, the County Line Check and Lift Pump and the Elkhorn Check and Lift Pumps;
- Regrading the North Drainage Canal from the V drain to Highway 99 in order to improve conveyance;
- Regrading the Elkhorn Main Highline Canal between the existing Prichard Pumping Plant and the existing Elkhorn Pumping Plant; and,
- Additional modifications to the distribution system based on which diversion facilities are constructed.

The EIS/EIR will consider a range of alternatives including the no-action alternative.

Scoping is an early and open process designed to determine the issues and alternatives to be addressed in the EIS/EIR. The following are items to be addressed that have been identified to date: Aesthetics/Visual Quality; Agricultural Resources; Air Quality; Biological Resources (Terrestrial and Aquatic Biology); Cultural Resources; Geology and Soils; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use; Noise; Transportation and Circulation; Environmental Justice; Indian Trust Assets; Cumulative Impacts; and Construction Effects.

The draft EIS/EIR will focus on the impacts and benefits of implementing the various alternatives. It will contain an analysis of the physical, biological, social, and economic impacts arising from the alternatives. In addition, it will address the cumulative impacts of implementation of the alternatives in conjunction with other past, present, and reasonably foreseeable actions.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 16, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–26621 Filed 10–21–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on September 30, 2003, a proposed Consent Decree in *United States* v. *Alliant Techsystems, Inc.,* Civil Action No. 03–4648, was lodged with the United States District Court for the District of New Jersey.

In this action the United States seeks the recovery of response costs incurred regarding the Radiation Technology Superfund site, In Rockaway Township, New Jersey. The proposed consent decree embodies an agreement with Alliant Techsystems, Inc. (ATK) to perform the gorundwater remedy at the Site and to reimburse the U.S. Environmental Protection Agency for up to $249,000 of its past response costs and for all oversight costs in connection with the performance of the remedy. The decree provides ATK with a covenant not to sue under sections 106 and 107(a) of CERCLA, sections 9606 and 9607(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and natural Resources Division, PO. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alliant Techsystems, Inc.,* D.J. No. 90–11–2–07691/1.

The Consent Decree may be examined at the Office of the United States Attorney, 970 Broad Street, Room 400, Newark, NJ 07102, and at the Region II Office of the U.S. Environmental Protection Agency, Region III Records Center, 290 Broadway, 17th Floor, New York, NY 1007–1866. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $32.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–26672 Filed 10–21–03; 8:45 am]

BILLING CODE 4410–BE–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, Clean Water Act and Emergency Planning and Community Right-to-Know Act

Notice is hereby given that a consent decree in *United States* v. *ALLTEL Corporation*, Civil Action No. 4:03CV–0792 WRW (E.D. Ark.) was lodged with the court on October 2, 2003.

The proposed decree resolves certain claims of the United States against ALLTEL Corporation under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, the Federal Clean Water Act, 22 U.S.C. 1251 *et seq.* and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.* for civil penalties and injunctive relief to redress violations occurring at numerous of ALLTEL's facilities located across the United States. Under the decree, ALLTEL is required to pay a civil penalty of $1,058,000 and is subjected to injunctive relief designed to ensure future compliance.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ALLTEL Corporation*, Civil Action No. 4:03CV–0792 WRW (E.D. Ark.), DOJ Ref. #90–5–1–1–07300.

The proposed consent decree may be examined at the office of the United States attorney for the Eastern District of Arkansas, 425 West Capital Avenue, Suite 500, Little Rock, Arkansas 72201. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov.enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. Copies of the appendices to the Consent Decree are also available at an additional charge of 25 cents per page.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–26671 Filed 10–21–03; 8:45 am]

BILLING CODE 4410–BE–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on August 29, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs, to actual damages under specified circumstances. Specifically, MCT Communications, Inc., Minneapolis, MN; and Tri-County Communications, Minneapolis, MN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on March 5, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 30, 2003 (68 FR 23161).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–26659 Filed 10–21–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on September 26, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Expanded Shale Clay and Slate Institute, Salt Lake City, UT has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on July 21, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 7, 2003 (68 FR 47090).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–26658 Filed 10–21–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Southwest Research Institute: Clean Diesel III

Notice is hereby given that, on September 12, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Clean Diesel III has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Exxon Mobil Corporation, Fairfax, VA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute: Clean Diesel III intends to file additional written notification disclosing all changes in membership.

On January 12, 2000, Southwest Research Institute: Clean Diesel III filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on October 1, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2002 (67 FR 68177).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–26657 Filed 10–21–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1390]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Public Safety Officer Medal of Valor Review Board to review and discuss recommendations for the 2003 Public Safety Officer Medal of Valor.

DATES: The meeting will take place on Wednesday, October 29, 2003, from 9 a.m. to 5 p.m. E.S.T.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel O'Hare-Rosemont in Rosemont, Illinois, 5500 North River Road, Rosemont, Illinois.

FOR FURTHER INFORMATION, CONTACT: Tracy A. Henke, Principal Deputy Assistant Attorney General, Office of Justice Programs, 810 7th Street NW., Sixth Floor, Washington, DC 20531; Phone: (202) 307–5933 (*note*: this not a toll free number).

Meeting Format: This meeting will be held according to the following schedule:

Date: Wednesday, October 29, 2003.

Time: 9 a.m.–5 p.m.; including breaks.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public and registrations will be accepted on a *space available* basis. Members of the public who wish to attend the meeting must register at least seven (7) days in advance of the meeting by contacting Ms. Henke at the above address. *Access to the meeting will not be allowed without prior registration.* All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting. Anyone requiring special accommodations should contact Ms. Henke at least seven (7) days in advance of the meeting.

Authority: The Public Safety Officer Medal of Valor Review Board is authorized to carry out its advisory function under 42 U.S.C. section 15202. 42 U.S.C. section 15201 authorizes the President to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.

Tracy A. Henke,

Principal Deputy Assistant Attorney General, Office of Justice Programs.

[FR Doc. 03–26648 Filed 10–21–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0216 (2004)]

Aerial Lifts (29 CFR 1926.453); Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information-collection requirement contained in the Aerial Lift Standard. Employers who modify an aerial lift for uses other than those provided by the manufacturer must obtain a certificate from the manufacturer or equivalent entity certifying that the modification is in conformance with applicable ANSI standards and this standard, and the equipment is as safe as it was prior to the modification. The manufacturer's certification demonstrates to interested parties that the manufacturer or an equally qualified entity assessed a modified aerial lift and found that it: Was safe for use by, or near, employees; and would provide employees with a level of protection equivalent to the protection afforded by the lift prior to modification.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted by (postmarked or received) December 22, 2003.

Facsimile and electronic transmission: Your comments must be received by December 22, 2003.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR–1218–0216 (2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m. EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. ICR–1218–0216 (2004), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

II. Obtaining Copies of Supporting Statement for the Information Collection

The Supporting Statement for the Information Collection is available for downloading from OSHA's Web site at *http://www.osha.gov.* The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Noah Connell, Directorate of Construction, OSHA, U.S. Department of Labor, Room N–3467, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e. employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The certification requirement specified in the Aerial Lifts Standard demonstrates that the manufacturer or an equally-qualified entity has assessed a modified aerial lift and found that it was safe for use by, or near, employees; and would provide employees with a level of protection at least equivalent to the protection afforded by the lift prior to modification.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information-collection requirements in the Aerial Lift (29 CFR 1926.453(a)(2)). The Agency is requesting an increase of 12 hours, from 3 hours to 15 hours. The increase is a result of increasing the number of aerial lifts, which increased the number being inspected from 60 lifts to 300 lifts. The certification requirement specified in the Aerial Lifts Standard demonstrates that the manufacturer or an equally-qualified entity has assessed a modified aerial lift and found that it was safe for use by employees.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Aerial Lift Standard.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Manufacturer's Certification of Aerial Lifts in Construction (29 CFR 1926.453).

OMB Number: 1218–0216.

Affected Public: Business or other for-profit.

Number of Respondents: 300.

Frequency: On occasion.

Total Responses: 300.

Average Time Per Response: 3 minutes.

Estimated Total Burden Hours: 15 hours.

Estimated Cost (Operation and Maintenance): 0.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC on October 16, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–26611 Filed 10–21–03; 8:45 am]

BILLING CODE 4510–26–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for Clean Water Act Compliance of the South Bay International Wastewater Treatment Plant, San Diego County, CA

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Notice of intent to prepare a draft Supplemental Environmental Impact Statement (SEIS).

SUMMARY: This notice advises the public that pursuant to Section 102(2) (c) of the National Environmental Policy Act of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) proposes to analyze and evaluate the impacts of alternatives for the South Bay International Wastewater Treatment Plant to achieve compliance with the Clean Water Act. The Draft SEIS will evaluate alternatives for treatment of sewage flows from Tijuana, Mexico that cross into the United States along the U.S/Mexican border in San Diego. This notice is being provided as required by the Council on Environmental Quality Regulations (40 CFR 1501.7) and the USIBWC's Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Draft SEIS. A public scoping meeting will be held to obtain community input to ensure that all concerns are identified and addressed in the Draft SEIS.

DATES: The USIBWC will conduct a public scoping meeting from 6 to 8 p.m. PST on Wednesday, November 12, 2003 at the San Ysidro Middle School, 4345 Otay Mesa Road, San Diego, CA. Full public participation by interested federal, State, and local agencies as well as other interested organizations and the general public is encouraged during the scoping process that will end 60 days from the date of this notice. Public

comments on the scope of the Draft SEIS, reasonable alternatives that should be considered, anticipated environmental problems, and actions that might be taken to address them are requested.

FOR FURTHER INFORMATION CONTACT: Comments will be accepted for 60 days following the date of this notice by Mr. Charles Fischer, Environmental Protection Specialist, USIBWC, 2225 Dairy Mart Road, San Diego, California, 92173. Telephone: 619/662–7600, Facsimile: 619/662–7607. E-mail: *cfischer@ibwc.state.gov*

SUPPLEMENTARY INFORMATION: The USIBWC has invited the USEPA to participate as a cooperating agency pursuant to 40 CFR 1501.6, to the extent possible. Other agencies may be invited to become cooperators as they are identified during the scoping process.

Background

Since the 1930s, raw sewage flowing into the United States from Mexico has posed a serious threat to public health and the environment in the South Bay communities of San Diego. Although substantial improvements have been implemented over the last two decades, large volumes of untreated wastewater still flow into the Tijuana River Valley today during the rainy season.

In July 1990, the USIBWC and Mexico signed Treaty Minute 283, which outlined a plan for the treatment of renegade sewage flows emanating from Tijuana, Mexico and crossing into the United States along the U.S/Mexican border in San Diego. In the Minute, the two countries agreed to construct an international secondary wastewater treatment plant (IWTP) on the U.S. side of the border that would treat 25 million gallons per day (mgd) of dry-weather sewage flows.

In a 1994 Final Environmental Impact Statement (FEIS) and Record of Decision (ROD), the USIBWC and the EPA, acting as lead agencies, decided to approve the construction of the South Bay International Wastewater Treatment Plant (SBIWTP) and South Bay Ocean Outfall (SBOO). The SBIWTP is located on a 75-acre site just west of San Ysidro, CA near the intersection of Dairy Mart and Monument Roads. Treated effluent is discharged to the Pacific Ocean through the SBOO, a 4.5-mile long 11-foot diameter pipe completed in January 1999.

Pursuant to the completion of an interim operations supplemental environmental impact statement (SEIS), the EPA and the USIBWC decided to construct the SBIWTP in phases: by first building advanced primary facilities followed later by secondary treatment facilities. The intent of this phased construction was to expedite treatment of up to 25 mgd of untreated sewage from Tijuana, which would otherwise have continued to pollute the Tijuana River and Estuary, and coastal waters in the United States.

Treatment at the SBIWTP was initiated in April 1997 as an advanced primary plant with discharge initially through an emergency connection to the City of San Diego Point Loma treatment facility. In January 1999, the SBIWTP began discharging through the completed SBOO.

After the release of the May 1994 Final EIS and ROD and the decision to construct the SBIWTP in two stages, significant additional information became available and new circumstances occurred which warranted a reconsideration of the best means of achieving the completion of secondary treatment facilities at the SBIWTP. Also as a settlement to a lawsuit which challenged the 1994 FEIS, the USIBWC and EPA decided to prepare a SEIS that examined this new information, and the lawsuit was settled.

In January 1998, the USIBWC and the EPA issued the Draft Long Term Treatment Options SEIS (Draft SEIS), to re-evaluate secondary treatment options for the SBIWTP. In addition, in October 1998, the agencies also issued a supplement to the 1996 Interim Operation SEIS that addressed impacts of the advanced primary treatment. This supplement disclosed new information about the presence of dioxins and acute toxicity in the advanced primary discharge. This new information was incorporated into the Final Long Term Treatment Options Supplemental Environmental Impact Statement (Final SEIS) released in March 1999.

In the 1999 ROD for the Long Term Treatment Options SEIS, the EPA and the USIBWC selected the Completely Mixed Aerated (CMA) Pond System at the Hofer Site as the long-term option to provide secondary treatment of 25 mgd of wastewater at the SBIWTP. However, the construction of these secondary treatment facilities was not funded by Congress and the plant has continued to provide advanced primary treatment.

In February 2001, California's Office of the Attorney General, on behalf of the California Regional Water Quality Control Board, San Diego Region (Regional Board), filed a complaint in U.S. District Court, Southern District of California, alleging violations of the federal Clean Water Act and the California Porter-Cologne Water Quality Control Act. Specifically, the complaint alleged USIBWC's discharge violated the terms of its National Pollutant Discharge Elimination System (NPDES) permit issued by the Regional Board for failing to treat the effluent to secondary standards and for violating other effluent limitations. The matter is now scheduled for trial.

The USIBWC has decided to prepare a Supplemental Environmental Impact Statement to address options/actions to cease violations of the NPDES permit limits either by providing secondary treatment in Mexico pursuant to Pub. L. 106–457; or by some other means, including but not limited to redirecting some or all of the IWTP effluent from California's waters and/or instituting some combination of these options.

Coordination with the U.S. Environmental Protection Agency, California Regional Water Control Board and other government agencies, as required, will take place to ensure compliance with applicable federal and state laws and regulations.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, CEQ Regulations (40 CFR parts 1500–1508), other appropriate federal regulations and the USIBWC procedures for compliance with those regulations. Copies of the Draft SEIS will be transmitted to federal and state agencies and other interested parties for comments and will be filed with the Environmental Protection Agency in accordance with 40 CFR parts 1500 through 1508 and USIBWC procedures.

Alternatives

The Draft SEIS to be prepared will consider a range of alternatives, including the no action alternative, based on issues and concerns associated with the project. The Draft SEIS will identify, describe, and evaluate the existing environmental, cultural, sociological and economical, and recreational resources; and evaluate the impacts associated with the alternatives under consideration. Significant issues that have been identified to be addressed in the Draft SEIS include, but are not limited to, impacts to water resources, water quality, cultural and biological resources, and human health effects.

The Draft SEIS will evaluate eight alternatives, as described herein:

1. No Action

Operation of IWTP as an advanced primary facility would continue with discharge to the SBOO until secondary treatment facilities are constructed.

2. Pub. L. 106–457—Secondary Treatment Facility in Mexico

Operation of IWTP as an advanced primary facility would continue with 25 mgd of primary treated effluent sent to a Secondary Treatment Facility to be constructed in Mexico. Treated effluent would be discharged through the SBOO. Facilities in the U.S. would include: a pump station located on the SBIWTP site; a force main extending from the pump station across the international border to the site of the Secondary Treatment Facility in Mexico; and, a return flow pipeline from the treatment facility to connect with the SBOO.

3. Operate the IWTP with Treated Flows Returned to Mexico for Discharge to Pacific Ocean at Punta Bandera

Operation of IWTP as an advanced primary facility would continue with conveyance of the treated effluent to Mexico via primary effluent return connection (PERC) conveyance/pumping facilities at the SBIWTP and existing conveyance/pumping facilities in Tijuana. If effluent does not enter the San Antonio de los Buenos WWTP, it would be discharged to the surf at a point approximately 5 miles south of the U.S. border at Punta Bandera.

4. Operate the IWTP With Treated Flows Returned to Mexico for Discharge to Pacific Ocean South of Punta Bandera

ITWP would continue to be used for advanced primary treatment with discharge of treated effluent to the Pacific Ocean at a point approximately one mile south of Punta Bandera (approximately 6 miles south of U.S. border).

5. Operate IWTP With City of San Diego Connection

Operation of IWTP as an advanced primary facility would continue but with a total of 15 mgd of advanced primary treated effluent sent to the City of San Diego's Southbay Water Reclamation Plant (SBWRP) for secondary treatment via a new connection with discharge of treated effluent through SBOO. The IWTP would send 10 mgd of screened effluent to the City's Point Loma Wastewater Treatment Plant for secondary treatment via the City's South Metro Interceptor.

6. Operate the IWTP With Treated Flows To send to Mexico and SBWRP

This alternative would be the same as Alternative 5 but instead of sending 10 mgd of screened effluent to Point Loma WWTP, 10 mgd of primary treated effluent would be returned to Mexico for discharge to the Pacific Ocean at Punta Bandera.

7. Completely Mixed Aeration (CMA) Ponds (i.e., Secondary Treatment) at the IWTP

As evaluated in the 1999 FEIS and ROD, a CMA pond system would be constructed at the IWTP to provide secondary treatment.

8. IWTP Closure/Shutdown

The IWTP would be closed as a result of lawsuit resulting from SBIWTP's noncompliance with Clean Water Act. Mexico's current pumping, conveyance, and treatment facilities would be used to handle projected sewage flows.

Availability of the Draft SEIS

The USIBWC anticipates the Draft SEIS will be made available to the public by August 2004.

Dated: October 14, 2003.

Mario Lewis,

Legal Advisor.

[FR Doc. 03–26620 Filed 10–21–03; 8:45 am]

BILLING CODE 7010–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act, Meetings

October 15, 2003.

TIME AND DATE: 10 a.m., Thursday, October 23, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Rag Shoshone Coal Corporation,* Docket No. WEST 99–342–R, WEST 99–384–R and WEST 2000–349. (Issues include whether the judge correctly concluded that the Secretary of Labor's interpretation of 30 CFR 70.207(e)(7) was reasonable; whether the judge correctly concluded that the Secretary of Labor was not required to engage in notice-and-comment rulemaking before imposing the 060 designed occupation for purposes of sampling levels of respirable cost dust; and whether the judge correctly concluded that the Secretary of Labor's imposition of the 060 designated occupation was not arbitrary, capricious, or an abuse of discretion.)

The Commission heard oral argument in this matter on October 9, 2003.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–9339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–26778 Filed 10–20–03; 1:19 pm]

BILLING CODE 6735–01–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Federal Advisory Committee Meeting

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice of meeting.

SUMMARY: The National Environmental Conflict Resolution (ECR) Advisory Committee, of the U.S. Institute for Environmental Conflict Resolution, will conduct a public meeting on Wednesday and Thursday, November 12–13, 2003, at the Westward Look Resort, 245 Ina Road, Tucson, Arizona 85704. The meeting will occur from 8 a.m. to approximately 5 p.m. on November 12, and from 8 a.m. to approximately noon on November 13.

Members of the public may attend the meeting in person. Seating is limited and is available on a first-come, first-served basis. During this meeting, the Committee will discuss: Committee organizational details; environmental conflict resolution (ECR) processes in connection with Section 101 of the National Environmental Policy Act (NEPA); best practices in ECR; reports of subcommittees on NEPA Section 101, best practices, and affected communities; and planning for future Committee work.

Members of the public may make oral comments at the meeting or submit written comments. In general, each individual or group making an oral presentation will be limited to five minutes, and total oral comment time will be limited to one-half hour each day. Written comments may be submitted by mail or by e-mail to *gargus@ecr.gov.* Written comments received in the Institute office far enough in advance of a meeting may be provided to the Committee prior to the meeting; comments received too near the meeting date to allow for distribution will normally be provided

to the Committee at the meeting. Comments submitted during or after the meeting will be accepted but may not be provided to the Committee until after that meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who desires further information concerning the meeting or wishes to submit oral or written comments should contact Tina Gargus, Special Projects Coordinator, U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Avenue, Tucson, AZ 85701; phone (520) 670–5299, fax (520) 670–5530, or e-mail at *gargus@ecr.gov.* Requests to make oral comments must be in writing (or by e-mail) to Ms. Gargus and be received no later than 5 p.m. Mountain Standard Time on Tuesday, November 4, 2003. Copies of the draft meeting agenda may be obtained from Ms. Gargus at the address, phone and e-mail address listed above.

Dated: October 17, 2003.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 03–26622 Filed 10–21–03; 8:45 am]

BILLING CODE 6820–FN–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on November 12–14, 2003, at Sandia National Laboratories, Albuquerque, New Mexico.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Wednesday, Thursday and Friday, November 12–14, 2003—8:30 a.m. until the conclusion of business.

The Subcommittee will hear presentations from representatives of the NRC staff, NRC staff consultants and industry on pilot plant study insights and potential mitigation strategies. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Further information contact: Mr. Richard K. Major, telephone: (301) 415–7366 or Dr. Richard P. Savio, telephone: (301) 415–7363 between 7:30 a.m. and 4:15 p.m. (ET).

Dated: October 16, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–26633 Filed 10–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 5, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 5, 2003—8:30 a.m.–10 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Richard P. Savio (telephone: 301–415–7363) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 16, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–26634 Filed 10–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 4, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 4, 2003—12:30 p.m. until 4:30 p.m.

The purpose of this meeting is to discuss R. E. Ginna nuclear plant license renewal application and the NRC staff's draft Safety Evaluation Report. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Rochester Gas and Electric Corporation, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Marvin D. Sykes (telephone 301/415–8716), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 16, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–26635 Filed 10–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement Regarding Extension of Reactor Coolant Pump Motor Flywheel Examination for Westinghouse Plants Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE), a model no significant hazards consideration (NSHC) determination, and a model application relating to a change in the technical specification (TS) required inspection interval for reactor coolant pump (RCP) flywheels at Westinghouse-designed reactors. The purpose of this model is to permit the NRC to efficiently process amendments that propose to extend the inspection interval for RCP motor flywheels. Licensees of nuclear power reactors to which the model applies may request amendments using the model application.

DATES: The NRC staff issued a **Federal Register** Notice on June 24, 2003 (68 FR 37590), which provided a model SE and a model NSHC determination relating to the extension of RCP flywheel examination frequencies for Westinghouse-designed reactors. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to revise TSs. The staff has posted a model application on the NRC Web site to assist licensees in using the consolidated line item improvement process (CLIIP) to extend the RCP flywheel examination frequency. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the extension of the minimum inspection intervals for RCP flywheels at Westinghouse-designed plants. This proposed change was proposed for incorporation into the STS by the Westinghouse Owners Group (WOG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–421, Revision 0. Much of the technical support for TSTF–421 was provided in topical report WCAP–15666–NP, ''Extension of Reactor Coolant Pump Motor Flywheel Examination,'' submitted on August 24, 2001. The NRC staff's acceptance of the topical report is documented in an SE dated May 5, 2003.

Applicability

This proposed change to the inspection interval for RCP motor flywheels is applicable to plants with Westinghouse-designed nuclear steam supply systems.

Public Notices

In a notice in the **Federal Register** dated June 24, 2003 (68 FR 37590), the staff requested comment on the use of the CLIIP to process requests to change the inspection interval for RCP flywheels at Westinghouse plants.

TSTF–421, as well as the NRC staff's SE and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

The staff received two responses to the notice soliciting comments about using the CLIIP to facilitate plant-specific adoption of TSTF–421. Both comments were offered by licensees and suggested that the model SE, NSHC determination, and application should be applicable to some facilities designed by Babcock and Wilcox (B&W).

The supporting material for TSTF–421, namely WCAP–15666–NP, did include some data for B&W plants. The topical report and related SE prepared by the NRC staff did not, however, specifically address the applicability of the risk assessments and other evaluations to B&W plants. The model SE and application offered as part of the CLIIP will remain applicable only to Westinghouse plants. The NRC staff acknowledges that some of the supporting material for TSTF–421 may also help to support plant-specific applications for the B&W units included in portions of WCAP–15666. The NRC staff will work with licensees for the applicable B&W units to ensure that our processes work as efficiently as possible for those applying for license amendments similar to that described in TSTF–421. The affected licensees are encouraged to discuss this matter with the NRC staff before submitting an application.

As described in the model application prepared by the staff, licensees may reference in their plant-specific applications to adopt TSTF–421 the SE and NSHC determination previously published in the **Federal Register** (68 FR 37590, June 24, 2003).

Dated at Rockville, Maryland, this 15th day of October 2003.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Acting Director, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–26632 Filed 10–21–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Payment of Premiums (29 CFR part 4007) (OMB control number 1212–0009; expires January 31, 2005). The collection of information also includes a certification of compliance with requirements to provide certain notices to participants under the PBGC's regulation on Disclosure to Participants (29 CFR part 4011). The PBGC is revising the collection of information to provide for electronic filing of premium information and payments. The PBGC intends to create an electronic facility, ''My Plan Administration Account'' (''MyPAA''), on its Web site at *http://www.pbgc.gov,* through which plan administrators and other plan professionals will be able to prepare and submit premium filings. This notice informs the public of the request for OMB approval and solicits public comment on the collection of information.

DATES: Comments should be submitted by November 21, 2003.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension (including the collection of information) may be obtained by writing to the Communications and Public Affairs Department, suite 240, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting that office or calling (202) 326–4040 during normal business hours. TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4040. The premium payment and participant notice regulations and the premium forms and instructions for 2003 and prior years can be accessed on the PBGC's Web site at *http://www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, (202) 326–4024. TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA'') requires the Pension Benefit Guaranty Corporation (''PBGC'') to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file forms prescribed by the PBGC, and § 4007.10 requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The PBGC has prescribed a series of premium forms: Form 1–ES, Form 1–EZ, and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1–ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1–EZ, Form 1, and Schedule A are issued, with instructions, in the PBGC's Annual Premium Payment Package.

Premium forms are needed to report the computation, determine the amount, and record the payment of PBGC premiums. The submission of forms and retention and submission of records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more premium forms each year. The PBGC uses the information on the premium forms to identify the plans paying premiums; to verify whether plans are paying the correct amounts; and to help the PBGC determine the magnitude of its exposure in the event of plan termination. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. In general, the participant notice requirement applies (subject to certain exemptions) to plans that must pay a variable-rate premium. In order to monitor compliance with part 4011, single-employer plan administrators must indicate on their premium filings whether the participant notice requirements have been complied with.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1–EZ, Form 1, and Schedule A to Form 1, and related instructions has been approved by OMB under control number 1212–0009. The collection of information also includes the certification of compliance with the participant notice requirements (but not the participant notices themselves).

The PBGC is revising the collection of information to provide for electronic filing of premium information and payments. As part of the PBGC's ongoing implementation of the Government Paperwork Elimination Act (GPEA), the PBGC is creating an application, ''My Plan Administration Account'' (''MyPAA'') on its Web site at *http://www.pbgc.gov,* through which plan administrators and other plan professionals will be able to prepare and submit premium filings.

The PBGC intends to request that OMB extend its approval of this collection of information, as revised, for three years from the date of approval. 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.

The PBGC estimates that it will receive responses annually from about 26,122 plan administrators and that the total annual burden of the collection of information will be about 3,055 hours and $15,965,675. (These estimates include paper and electronic filings.)

Issued in Washington, DC, this 17th day of October, 2003.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–26674 Filed 10–21–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48644; File No. SR–BSE–2003–13]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to the Initial Allocation Plan for the Proposed Boston Options Exchange Facility

October 16, 2003.

I. Introduction

On July 30, 2003, the Boston Stock Exchange, Inc. (''BSE'' 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 that would establish an allocation plan for market maker appointments and accompanying deposit requirements related to the Exchange's proposed options trading facility, Boston Options Exchange (''BOX'').[3] On August 7, 2003, the Exchange's rule proposal was published for comment in the **Federal Register**.[4] No comment letters were received on the proposal. On October 2, 2003, BSE submitted Amendment No. 1 to the proposed rule change.[5] This order approves the proposal, publishes notice of Amendment No. 1, and approves Amendment No.1 on an accelerated basis.

II. Description of Proposal

The BSE proposes that it would ultimately not restrict the number of market makers assigned per class in its proposed BOX market model. Nevertheless, BSE proposes a six-month plan to allocate assignments to a limited number of firms to make markets in the initial 250 classes traded on BOX.[6] Specifically, BOX would phasein trading for the top 250 classes by limiting the number of market maker assignments to 1,911, during the first three months of trading. All remaining assignments requested prior to the commencement of trading on BOX would be assigned by BSE to prospective market making firms on a class-by-class basis during the following three months. In this regard, the Exchange proposes to add to its rules new Chapter XXXVII, which sets forth the initial allocation process for BOX market maker appointments and accompanying deposit requirements.

Under the proposal, BSE would request that prospective market maker firms declare their interest for the initial market making assignments, and provide information regarding their prior experience as a market maker on an automated market and their capital commitment to options activities. In addition, prospective market maker firms would deposit funds with BSE based on their requested assignments.

To begin the initial allocation, BSE would allocate 889 assignments to experienced firms.[7] BSE would assign firms to a class based on the firms' requests unless the number of requests for a particular class exceeds the number of assignments available. In that case, the BSE would use a random lottery whereby names would be drawn from a pool of all experienced firms requesting a class until the assignments available in that class are allocated. BSE represents that the random lottery would be externally audited to verify its integrity, neutrality, and fairness.

Following the allocation to experienced firms, BSE would allocate 1,022 assignments to all other prospective market making firms, including any experienced firms that did not receive assignments for all of their requested classes in the lottery. BSE would also allocate these 1,022 assignments by request unless the demand for a particular class exceeds the number of assignments available, in which case BSE would allocate assignments using a random lottery. Any prospective market making firms that do not receive a requested allocation in the 1911 assignments allocated for the first three months of trading would be placed on a waiting list and would be allocated their requested assignments within six months of the launch of the BOX market.[8]

All assignments to prospective market making firms would be subject to such an applicant's approval as an Options Participant[9] and a market maker on BOX. In addition, any applicant denied any privilege under the allocation process, including denial of acceptance as an ''experienced'' market maker, could appeal such decision according to the procedures set forth in BSE Chapter XXX, Disciplining of Members, Denial of Membership.

At the time a market maker's assignments become available to trade on BOX, deposits for those assignments would be released to BOX and would be nonrefundable, and considered as pre-paid fees credited against such market maker's BOX account to offset trading, technology and other related fees and charges.[10] Before any class becomes available for trading for a particular market maker, if the applicant notifies BSE that it wishes to drop certain allocated classes, BSE would refund fifty percent of the related deposit.

The proposed allocation plan would apply on a pilot basis set to expire no later than six months beyond the initial launch date of the BOX market. Following the pilot period, the BSE would no longer limit the number of market makers assigned per class.

III. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–13 and should be submitted by November 12, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[11] and, in particular, the requirements of Section 6 of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 47186 (January 14, 2003), 68 FR 3062 (January 22, 2003) and 48355 (August 15, 2003), 68 FR 50813 (August 22, 2003) (SR–BSE–2002–15).

[4] *See* Securities Exchange Act Release No. 48271 (August 1, 2003), 68 FR 47113.

[5] *See* letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 1, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified that it would use Options Clearing Corporation volume statistics from January 2003 through June 2003 for the initial allocation. The Exchange made several technical modifications to the rule text to reflect this clarification. In addition, the Exchange amended the proposal to clarify that all applicants would receive their requested assignments within six months of the launch of the BOX market.

[6] The top 250 classes would be determined based on Options Clearing Corporation volume statistics from January 2003 through June 2003. *See* Amendment No. 1, *supra* note 5.

[7] A prospective market making firm would qualify as experienced if it has been a market maker or specialist on an organized fully automated market for a minimum of fifty classes for at least six months and has sufficient capital committed to its options activities to effectively support an automated market in BOX, as determined by the BSE. *See* proposed BSE Chapter XXXVII, Section 1(b).

[8] *See* Amendment No. 1, *supra* note 5.

[9] *See* proposed BOX Rules, Chapter I, General Provisions, Section 1(a)(39) (definition of ''Options Participant'').

[10] *See* Amendment No. 1, *supra* note 5.

[11] The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] Specifically, the Commission finds that the proposal to allocate options classes to prospective market makers on the proposed BOX market is consistent with Section 6(b)(5) of the Act,[13] because it will help the Exchange manage the initial launch of trading on the proposed BOX market. In this regard, the Commission notes that all allocations under this proposal are contingent on a prospective firm obtaining approval as a BOX market maker and Options Participant, and Commission approval of the BOX market. Further, the Commission notes that the proposal provides an appeal process for an applicant in the event that any such applicant is denied any privilege in connection with the allocation process.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[14] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that in Amendment No. 1 the BSE proposes no substantive changes to its filing and, instead, merely clarifies the proposed allocation procedure.

In approving this allocation plan, the Commission is not prejudging the BOX proposal. If the Commission were not to approve BOX, all deposits would be refunded to applicant firms. Approving the allocation plan does, however, afford the BSE an opportunity to prepare for the possibility that the Commission will approve BOX and reduces the time between any such approval and the commencement of trading on the BOX market.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR–BSE–2003–13) is hereby approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26643 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–U

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48636; File No. SR–GSCC–2002–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Elimination of the Comparison-Only Requirement for New GSCC Netting Members

October 15, 2003.

I. Introduction

On September 5, 2002, the Government Securities Clearing Corporation (''GSCC'') [1] filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–2002–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposed rule change was published in the **Federal Register** on June 20, 2003.[3] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

GSCC's rules currently provide that an entity is eligible to become a netting member if, among other things, it has been a comparison-only member for at least six months unless the requirement is waived by GSCC's Membership and Risk Management Committee (''Committee''). The comparison-only membership requirement was included in GSCC's rules when GSCC first began operations. The purpose of this provision was to give GSCC staff the opportunity to ensure that a firm was operationally sound and had the ability to properly communicate with GSCC before being permitted to participate in the netting system. Over the years, GSCC netting membership has become more critical for active market participants, and it has become increasingly common for management to seek and receive approval to waive the six month comparison-only membership requirement. Unlike other netting membership requirements, such as minimum financial standards and regulation by an established regulatory entity, the comparison-only membership requirement has not been necessary to ensure the integrity of the admission and membership processes. GSCC staff has gained significant experience in making determinations about a firm's operational capability without having any comparison-only membership history. The granting of netting membership based on reviews without any comparison-only membership history has not presented GSCC with any operationally-deficient netting members.

For these reasons, GSCC is amending its rules to (1) eliminate the six month comparison-only membership requirement as a routine matter and (2) permit GSCC to require an applicant to be a comparison-only member for a time period GSCC deems necessary if GSCC believes such action, in order to protect itself and its members, is necessary to assess the operational capability of the applicant. GSCC's determination to impose a comparison-only membership requirement shall be based on the presence of one or more of the following conditions: (a) The applicant is a newly-formed entity with little or no functional history; (b) its operational staff lacks significant experience; (c) if one of the above conditions is present, it has not engaged a service bureau or correspondent clearing member with which GSCC has had a relationship; or (d) any other factor that management believes might suggest insufficient operational ability.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[4] GSCC believes that in most cases it can adequately and without compromising its ability to safeguard its members securities and funds make the determination about an applicant's operational capability and can grant netting membership without requiring the applicant to be a comparison-only member for at least six months. In those situations where GSCC believes it would be prudent to require an applicant to be a comparison-only member for some period of time, GSCC has retained the ability to do so. Accordingly, the proposed rule change should not negatively affect GSCC's ability to safeguard securities and funds

[1] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into the Government Securities Clearing Corporation (''GSCC'') and GSCC was renamed the Fixed Income Clearing Corporation (''FICC''). Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 48010 (June 10, 2003), 68 FR 37035.

[4] 15 U.S.C. 78q–1(b)(3)(F).

which are in its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2002–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26646 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48631; File No. SR–NASD–2003–127]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for the Listing of Additional Shares Program and To Institute a Record-Keeping Fee for Certain Changes by Issuers

October 15, 2003.

I. Introduction

On August 11, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') submitted to 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 modify the fees for the listing of additional shares (''LAS'') program and to institute a record-keeping fee for certain changes by issuers. The proposed rule change was published for comment in the **Federal Register** on September 9, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed rule change is to modify the fees for the LAS program and to institute a record-keeping fee for certain changes by issuers in order to respond to the needs of Nasdaq. The LAS program involves notification and fee requirements for the issuance of additional shares. Specifically, an issuer must notify Nasdaq prior to a transaction that may implicate the corporate governance requirements and thereafter pay a fee that is based on the change in the issuer's total shares outstanding as reported in its periodic reports filed with the Commission. Nasdaq proposes to modify the LAS program fees in two ways. First, the minimum fee would be increased from $2,000 to $2,500 for issuances of between 50,000 and 250,000 additional shares.[4] Second, the current quarterly cap of $22,500 would be eliminated. The annual cap of $45,000, however, would be retained.

In addition, Nasdaq also proposes to institute a $2,500 record-keeping fee for certain changes made by issuers. Such a fee would be used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a change of name, a change in the par value or title of securities, or a voluntary change in trading symbol.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities association,[5] and, in particular, with the requirements of Section 15A[6] of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(5)[7] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system, which the NASD operates or controls. The Commission finds that the proposed rule change is reasonably designed to accomplish these ends by modifying the fees for the listing of additional shares program and to institute a record-keeping fee for certain changes by issuers on an equal basis. Moreover, the Commission believes that the additional fees should assist the NASD in carrying out its self-regulatory responsibilities.[8]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NASD–2003–127) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26587 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48413 (August 26, 2003), 68 FR 53209.

[4] As under the current rules, there would be no fee for issuances of up to 49,999 per quarter.

[5] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(5).

[8] Nasdaq has represented to the Commission that the LAS program fees are used to fund issuer-related operations, including educational initiatives, issuer service initiatives, and surveillance measures. *See* Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60257 (December 18, 1992).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48627; File No. SR–NASD–2003–130]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Amendments to Its Recently Adopted Rules Regarding Shareholder Approval for Stock Option or Purchase Plans or Other Equity Compensation Arrangements

October 14, 2003.

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 18, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On October

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 2, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq replaced the terms ''compensation committee'' or ''compensation committee

7, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change relating to amendments to its recently adopted rules regarding shareholder approval for stock option or purchase plans or other equity compensation arrangements.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Rule 4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)–(h) No change

(i) Shareholder Approval

(1) Each issuer shall require shareholder approval prior to the issuance of designated securities under subparagraph (A), (B), (C), or (D) below:

(A) when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which options or stock may be acquired by officers, directors, employees, or consultants, except for:

(i) No change

(ii) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's *independent* compensation committee or a majority of the issuer's independent directors; or plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value; or

(iii) No change

(iv) issuances to a person not previously an employee or director of the company, provided such issuances are approved by either the issuer's *independent* compensation committee [comprised of a majority of independent directors] or a majority of the issuer's independent directors. *Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.*

(B)–(D) No change

(2)–(6) No change

(j)–(l) No change

IM–4350–5. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 4350(i)(1)(A) ensures that shareholders have a voice in these situations, given this potential for dilution.

Rule 4350(i)(1)(A) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) any material expansion of the class of participants eligible to participate in the plan; and

(4) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an ''evergreen formula''), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that *do not contain a formula and do not* impose *a* [no] limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 4350(i)(1)(A) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans [1] as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. *An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.*

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances must be approved by the issuer's *independent* compensation committee or a majority of the issuer's independent directors. *The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a company*

comprised of a majority of independent director'' throughout NASD Rule 4350(i) and IM–4350–5 with the phrase ''independent compensation committee.'' This proposed change is to conform Nasdaq's description of compensation committee to that of NYSE's description in Section 303A(8) of the NYSE's Listed Company Manual. In addition, in Amendment No. 1, Nasdaq requested accelerated approval of the proposed rule change, as amended.

[4] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 7, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made technical corrections to the proposed rule text.

must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 4350(i)(1)(A). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) The time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in a connection with a merger or acquisition would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 4350(i)(1)(C).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's *independent* compensation committee [comprised of a majority of independent directors,] or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 4350(i)(1)(A) and IM–4350–5, the term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) It covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

[The term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

NASD Rule 4350(i)(1)(A) generally requires shareholder approval when a stock option or purchase plan is established or materially amended or other arrangement made pursuant to which options or stock may be acquired by officers, directors, employees or consultants. This Rule, however, provides that shareholder approval is not required for employment inducement grants made to new employees. Nasdaq believes that shareholder approval is not required for employment inducement grants because a company has an arm's length relationship with the new employees in these cases. Although shareholder approval is not required for employment inducement grants, they can only be made upon approval of the issuer's independent compensation committee or a majority of the issuer's independent directors. Nasdaq is proposing to also require an issuer to promptly disclose in a press release the material terms of employment inducement grants, including the recipients of the grants and the number of shares involved. Nasdaq believes that such disclosure would provide transparency to investors and reduce the potential for abuse of

this exception from the shareholder approval requirements.

Nasdaq further proposes to clarify IM–4350–5, which provides interpretative guidance regarding shareholder approval for stock option plans or other equity compensation arrangements. As previously mentioned, NASD Rule 4350(i)(1)(A) requires, in part, shareholder approval when a stock option or purchase plan is materially amended. IM–4350–5 currently provides that while general authority to amend a plan does not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. Stock option plans that contain a formula for automatic increases in the shares available or for automatic grants pursuant to a dollar-based formula, however, cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. Nasdaq proposes to amend IM–4350–5 to clarify that plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. This change will provide greater transparency regarding the shareholder approval requirements for material changes to stock option plans.

In addition, Nasdaq proposes to clarify IM–4350–5 with respect to tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans. These plans are excepted from the shareholder approval requirements because they are regulated under the Internal Revenue Code and Treasury Department regulations. Nasdaq proposes to clarify IM–4350–5 by stating that an equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from the shareholder approval requirements. This change will provide greater transparency for issuers regarding tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans for their non-U.S. employees.

Nasdaq also proposes to make a change to the terms ''compensation committee'' and ''compensation committee comprised of a majority of independent directors'' by replacing these terms with ''independent compensation committee.''

Lastly, Nasdaq proposes to move the text of footnote 1 of IM–4350–5 into the text of the IM in order to provide greater clarity of the IM in the NASD Manual.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with Section 15A of the Act,[5] in general, and furthers the objectives of Section 15A(b)(6) of the Act,[6] 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 will strengthen shareholder approval requirements with respect to stock option and purchase plans and provide greater transparency for investors as well as issuers and their counsel.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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.

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. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–130 and should be submitted by November 12, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the Nasdaq proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] The Commission finds that the Nasdaq proposal, as amended, is consistent with provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(6) of the Act,[9] in particular, in that the it is designed to, among other things, facilitate transactions in securities; 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 a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

The Commission notes that the changes and clarifications proposed by Nasdaq in this proposal are similar to provisions that are currently in the NYSE's rule relating to shareholder approval of equity compensation plans, Section 303A(8) of the NYSE's Listed Company Manual. In particular, the Commission notes that Nasdaq proposes to adopt a disclosure requirement similar to the NYSE's disclosure requirement that, promptly following the grant of any inducement award, companies must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.[10] The Commission believes that such a disclosure requirement should help to provide transparency to investors and reduce the potential for abuse of this exception for inducement grants.

In addition, the Commission notes that, similar to the NYSE's exemption

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] In approving the Nasdaq proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] This disclosure would, of course, be in addition to any information that is required to be disclosed in annual reports filed with the Commission. For example, Item 201(d) of Regulation S–K [17 CFR 229.201(d)] and Item 201(d) of Regulation S–B [17 CFR 228.201(d)] require issuers to present ''in their annual reports on Form 10–K or Form 10–KSB—separate, tabular disclosure concerning equity compensation plans that have been approved by shareholders and equity compensation plans that have not been approved by shareholders.

under Section 303A(8) of the its Listed Company Manual, Nasdaq proposes to adopt an exception from the shareholder approval requirements for equity compensation plans that provide non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law. The Commission believes that this change will conform Nasdaq's shareholder approval rule to that of the NYSE and will provide greater clarity for issuers regarding tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans for their non-U.S. employees.

Finally, Nasdaq proposes certain changes to it current shareholder approval rule to provide further clarity and conformity of its rule to the NYSE's shareholder approval rule. One such proposed change is replacing the terms ''compensation committee'' and ''compensation committee comprised of a majority of independent directors'' with the term ''independent compensation committee.'' [11] This change makes Nasdaq's rules consistent with similar provisions in the NYSE's shareholder approval rules.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Nasdaq has requested it to approve the proposed rule change, as amended, on an accelerated basis, because the proposed change, as amended, is intended to clarify existing Nasdaq rules. The Commission does not believe the Nasdaq's proposal, as amended, raises any new issues that the Commission has not already considered and addressed when approving similar provisions in the NYSE's shareholder approval rule.[12] The Commission believes that granting accelerated approval of the proposal, as amended, will allow the proposed changes to become immediately incorporated into Nasdaq's shareholder approval rule and will provide more consistency and uniformity between the Nasdaq and NYSE's shareholder approval rules. Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act, [13] to approve the proposal and Amendment Nos. 1 and 2 thereto on an accelerated basis.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2003–130) and Amendment Nos. 1 and 2 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26588 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–P

[11] *See also* proposed NASD Rule 4350(c)(3) in Amendment No. 3 to File No. SR–NASD–2002–141 (filed on October 10, 2003) and Securities Exchange Act Release No. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003), relating to the composition of the compensation committee.

[12] *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR–NYSE–2002–46 and SR–NASD–2002–140). The Commission notes that the NYSE provisions were noticed for a full 21-day comment period in the **Federal Register**.

[13] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48599; File No. SR–NASD–2003–112]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Locked Markets in the Nasdaq InterMarket

October 7, 2003.

On July 18, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 5263 which deals with locked and crossed markets in the Nasdaq InterMarket. On August 5, 2003, the Association submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 3, 2003.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] Specifically, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules 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 Commission believes that applying the same rule for locked and crossed markets that occur in the Intermarket Trading System (''ITS'') Plan will eliminate the disparity that currently exists between the ITS Plan and the Nasdaq InterMarket.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2003–112), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26589 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 4, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48412 (August 26, 2003), 68 FR 52433.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48637; File No. SR–NASD–2003–118]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Introduce Fees for Persons That Are Not NASD Members Using the Financial Information Exchange Protocol To Connect to Nasdaq

October 15, 2003.

On July 31, 2003, 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 propose connectivity and testing fees for persons that are not NASD members wishing to use the Financial Information Exchange (''FIX'') protocol to connect to Nasdaq. The proposed rule change was published for comment in the **Federal Register** on September 12, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[5] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

The Commission finds that the proposed rule change is reasonably designed to accomplish these ends because the introduction of the FIX protocol as a means of accessing SuperMontage will expand the connectivity options available to Nasdaq's subscribers, and thereby enhance transparency in SuperMontage. In addition, the Commission notes that Nasdaq has represented that the proposed fees for FIX connectivity and testing are similar in structure and dollar amount to existing fees for computer-to-computer interface (''CTCI'') and application programming interface (''API'') connectivity. The Commission notes further that firms that already have dedicated CTCI circuits will be able to use FIX over their existing circuits, and therefore will not require that new circuits be installed. Firms that do not already have CTCI circuits may either obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI, or may opt to obtain circuits to support FIX alone at a reduced price. The Commission believes that the proposed rule supports the efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2003–118), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26647 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48452 (September 5, 2003), 68 FR 53767.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(5).

[6] 15 U.S.C. 78(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXHANGE COMMISSION

[Release No. 34–48632; File No. SR–NYSE–2003–25]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Continuing Annual Fees for ''Repackaged'' Securities

October 15, 2003.

On August 28, 2003, 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 Section 902.02 of the NYSE's Listed Company Manual to implement certain changes to the continuing annual listing fees payable in connection with certain structured products called ''repackaged'' securities (''Repacks''), and to reinstate the Exchange's ''15-year'' policy with respect to previously listed Repacks.

The proposed rule change was published for comment in the **Federal Register** on September 10, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b) of the Act,[6] and in particular with Section 6(b)(4) of the Act,[7] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that reinstatement of the ''15-year'' policy for Repacks listed prior to January 1, 2003, should eliminate the unintended consequence of imposing an economic burden on Repack trusts that do not have sufficient funding to pay continuing annual listing fees because the trust had relied on the policy. The Commission notes that, with respect to Repacks listed after January 1, 2003, the continuing annual listing fees will be applicable to Repacks at the time of listing and will remain in effect for the life of the security (*i.e.*, the ''15-year'' policy will not apply). The Commission believes that the proposed rule change should provide guidance as to applicable fees for present and future Repacks[8] and should provide trust depositors with notice for Repacks listed after January 1, 2003 to reserve funding to pay continuing annual listing fees.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NYSE–2003–25) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26644 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–U

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48429 (September 3, 2003), 68 FR 53411.

[4] 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).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] The proposed rule change is effective from the date of this approval order and cannot be applied retroactively.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48630; File No. SR–PCX–2003–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Two New Order Types

October 15, 2003.

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 2, 2003, the Pacific Exchange, Inc. (''PCX'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.[4] 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'') proposes to adopt new rules for the implementation of a new order auction entitled ''Closing Auction'' for Nasdaq and exchange-listed securities traded on the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. The proposal also introduces two new order types called Market-on-Close Order and Limit-on-Close Order that would be eligible for execution only during the Closing Auction.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*, and proposed deletions are in [brackets].

* * * * *

Exhibit A

Text of the Proposed Rule Change: PCX Equities, Inc.

Rule 1

Definitions

Rule 1.1(a)–(p)—(No change.)

Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be, the term ''Imbalance'' shall mean the number of buy or sell shares that can not be matched with other shares at the Indicative Match Price at any given time.

Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be, the term ''Indicative Match Price'' shall mean for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous trading day's normal market hours (or, in the case of a *Closing Auction or a* Trading Halt Auction, the last sale during normal market hours), as determined by the [C] *c*onsolidated [T] *t*ape will establish the opening price *(or the closing price in the case of a Closing Auction),* provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.

Limited Price Order

(s) The term ''Limited Price Order'' shall mean any order with a specified price or prices (*e.g.*, limit orders, *Limit-on-Close Orders,* and Working Orders), other than Stop Orders.

(t)–(aaa)—(No change.)

* * * * *

Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31 (a)–(cc)—(No change.)

(dd) Market-on-Close Order (''MOC''). A Market Order that is to be executed only during the Closing Auction.

(ee) Limit-on-Close Order (''LOC''). A Limited Price Order that is to be executed only during the Closing Auction.

* * * * *

Trading Sessions

Rule 7.34

(a)–(c)—(No change.)

(d) Orders Permitted in Each Session.

(1)—(No change.)

(2)—(No change.)

(3) During the Late Trading Session:

(A)—(No change.)

(B) *Users may enter Market-on-Close Orders or Limit-on-Close Orders beginning at 4:30 a.m. (Pacific Time) and concluding at 1:02 p.m. (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(3). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during the Closing Auction.*

(C) *Market-on-Close Orders and Limit-on-Close Orders that are not executed during the Closing Auction shall be cancelled. Timed Orders designated as good from 1:02 pm (Pacific Time) shall not be eligible to participate in the Closing Auction.*

(D)[(B)] Market orders and Stop Orders are not eligible for execution during the Late Trading Session.

(E)[(C)] The Directed Order and Tracking Order Processes are not available during the Late Trading Session.

(e)–(f)—(No change).

[Opening Session] Auctions

Rule 7.35

(a)–(c)—(No change.)

[(d) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:]

[(1) Re-Opening Time. After trading in a security has been halted, the Corporation shall disseminate the estimated time at which trading in that security will re-open (the ''Re-Opening Time'').]

[(2) Publication of Indicative Match Price and Imbalances]

[(A) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means as determined from

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 6, 2003 (''Amendment No. 1''). In Amendment No. 1, the PCX submitted a new Form 196–4, which replaced the original filing in its entirety.

[4] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Timothy Fox, Attorney, Division of Market Regulation, Commission, dated October 14, 2003 (''Amendment No. 2''). In Amendment No. 2, the PCX amended proposed PCXE Rule 7.35(g)(1) to clarify that Halt Auctions would be conducted pursuant to proposed PCXE Rules 7.35(g)(2) to (g)(6), and not pursuant to PCXE Rules 7.35(b) and (c), as previously cross-referenced. In addition, the PCX added the phrase ''and an Indicative Match Price does not exist'' to proposed PCXE Rule 7.35(g)(4)(A)(ii) for clarity, and to a related description contained Item 3 and Exhibit 1 to the filing. The PCX added a reference to the Closing Auction in Item 3 and Exhibit 1 for clarity. The PCX also made technical corrections to PCXE Rule 7.35(d)(1) and proposed PCXE Rule 7.35(g)(6).

time to time by the Corporation. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.]

[(B) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.]

[(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.]

[(3) Reduction of Imbalances]

[(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:]

[(i) Market orders;]

[(ii)Limited Price Orders; and]

[(iii)Auction-Only Limit Orders.]

[(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.]

[(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.]

[(D) Interaction with ITS]

[(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.]

[(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.]

[(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.]

[(4) Determination of Trading Halt Auction Price]

[(A) For exchange-listed securities:]

[(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.]

[(B) For A Nasdaq Security:]

[(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available,]

[(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or]

[(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or]

[(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or]

[(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or]

[(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.]

[(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.]

[(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.]

(d) Transition to Core Trading Session.

(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(2) Market Orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).

(3) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

[(e) Transition to Core Trading Session.]

[(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

[(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).]

[(3) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

(e) Closing Auction

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 12:00 pm (Pacific Time), and updated real-time thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, and the Imbalance associated with the Closing Auction, if any, will be, shall be published via electronic means.

Example 1: (1) Limit-on-Close Order to buy 1000 shares at 50;

(2) Limit-on-Close Order to sell 5000 shares at 40; and

(3) Market-on-Close Order to sell 2000 shares.

The Archipelago Exchange will publish an Indicative Match Price of 40, a match volume of 1000 shares, and an Imbalance of 1000 shares.

Example 2: (1) Market-on-Close Order to buy 3000 shares;

(2) Market-on-Close Order to sell 1000 shares;

(3) Limit Order to sell 1000 shares at 41; and

(4) Limit Order to sell 1000 shares at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of 41.25 and a match volume of 3000 shares and will not publish an Imbalance.

(B) If an Indicative Match Price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(C) If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means.

(2) Reduction of Imbalances

(A) Any Imbalance in the Closing Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market-on-Close Orders;

(ii) Limit orders designated for the Late Trading Session and entered prior to the Closing Auction; and

(iii) Limit-on-Close Orders.

(B) Between 1:00 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders eligible for the Late Trading Session may be cancelled, but Market-on-Close Orders and Limit-on-Close Orders may not be cancelled.

(C) Between 1:00 pm (Pacific Time) and the conclusion of the Closing Auction, Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the Imbalance. Market-on-Close Orders and Limit-on-Close Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance, however, any time before the Closing Auction. Market-on-Close Orders and Limit-on-Close Orders that create equilibrium and thereafter convert the Imbalance from a buy to a sell (or convert the Imbalance from a sell to a buy) Imbalance will be rejected.

Example: (1) Limit-on-Close Order to buy 1000 shares; (2) Limit-on-Close Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A Market-on-Close Order or Limit-on-Close Order to buy 500 shares would be permitted because it achieves equilibrium. However, a Market-on-Close Order or Limit-on-Close Order to buy 1000 shares would not be permitted as it would inverse the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

(3) Determination of Closing Auction Price

(A) If there is no Imbalance, orders will be executed in the Closing Auction at the Indicative Match Price as of 1:02 pm (Pacific Time).

(B) If an Imbalance exists, or if equilibrium exists between buy Market-on-Close Orders and sell Market-on-Close Orders and an Indicative Match Price does not exist, as many buy Market-on-Close Orders and sell Market-on-Close Orders as possible shall be matched, on a time priority basis:

(i) At the midpoint of the NBBO at 1:02 pm (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or

(ii) At the locked price if the NBBO is locked at 1:02 pm (Pacific Time); or

(iii) if the NBBO is crossed at 1:02 pm (Pacific Time) and the Archipelago Exchange is a party to the crossed market, at the bid (offer) side of the BBO which is crossed with the NBBO; or

(iv) if the NBBO is crossed at 1:02 pm (Pacific Time) and the Archipelago Exchange is not a party to the crossed market, at the last sale during the regular market hours as determined by the consolidated tape; or

Such executions shall be designated with a modifier to identify them as Closing Auction trades. The Market-on-Close Orders that are eligible for, but not executed in, the Closing Auction shall be cancelled immediately upon conclusion of the Closing Auction.

[f] [Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.]

(f) Transition to Late Trading Session. Limited Price Orders designated for the Late Trading Session entered before 1:00 pm (Pacific Time) shall participate in the Closing Auction. Limited Price Orders designated for the Late Trading Session entered after 1:00 pm (Pacific Time) shall become eligible for execution at 1:02 pm (Pacific Time) or at the conclusion of the Closing Auction, whichever is later.

(g) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:

(1) Re-Opening Time. After trading in a security has been halted, the Archipelago Exchange shall disseminate the estimated time at which trading in that security will re-open (the ''Re-Opening Time'').

(A) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen prior to 12:55 pm (Pacific Time), the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (g)(2) through (6) of this Rule.

(B) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen at 12:55 pm (Pacific Time) or later, no Closing Auction will occur for that security. Instead, the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (g)(2) through (6) of this Rule.

(2) Publication of Indicative Match Price and Imbalances

(A) Immediately after trading is halted in a security, and updated real-time thereafter, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means. If such a price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Immediately after trading is halted in a security, and updated real-time thereafter, the Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means.

(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means.

(3) Reduction of Imbalances

(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market Orders; and

(ii) Limited Price Orders.

(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders

are not eligible for execution in the Trading Halt Auction.

(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.

(D) Interaction with ITS

(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.

(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.

(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.

(4) Determination of Trading Halt Auction Price

(A) For exchange-listed securities:

(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders and an Indicative Match Price does not exist, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.

(B) For Nasdaq securities:

(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available,

(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or

(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or

(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or

(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or

(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell Market Orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.

(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.

(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.

(h) Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.

* * * * *

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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 PCX proposes to amend PCXE Rule 7.35 to introduce the Closing Auction, which would apply to both Nasdaq and exchange-listed securities traded on ArcaEx.[5] The Closing Auction would take place following the Core Trading Session. The Closing Auction would occur at 1:02 p.m. (Pacific Time). The PCX also proposes to amend PCXE Rule 7.31 to implement two new order types designated as a Market-on-Close Order[6] and Limit-on-Close Order,[7] and to amend PCXE Rule 7.34 to clarify that these two new order types are eligible for execution during the Late Trading Session. Market-on-Close Orders and Limit-on-Close Orders would be eligible for execution only during the Closing Auction. Any Market-on-Close Order or Limit-on-Close Order that is not executed during the Closing Auction would be cancelled. Market-on-Close Orders and Limit-on-Close Orders that are designated as Timed Orders[8] and designated as good from 1:02 p.m. (Pacific Time) would not be eligible for execution during the Closing Auction.

Under proposed PCXE Rule 7.35(e), ArcaEx would publish the Indicative Match Price,[9] the matched volume and Imbalance relative to the Closing Auction.[10] Accordingly, beginning at 12:00 p.m. (Pacific Time), and updated real-time thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, and the Imbalance associated with the Closing Auction, if any, would be published via electronic means by the PCX. The following are examples of the foregoing:

Example 1: (1) Limit-on-Close Order to buy 1000 shares at 50;

(2) Limit-on-Close Order to sell 5000 at 40; and

(3) Market-on-Close Order to sell 2000 shares

In this example, ArcaEx would publish an Indicative Match Price of 40, a match volume of 1000 shares, and an Imbalance of 1000 shares.

Example 2: (1) Market-on-Close to buy 3000 shares;

(2) Market-on-Close to sell 1000 shares;

(3) Limit Order to sell 1000 shares at 41; and

(4) Limit Order to sell 1000 shares at 41.25.

In this example, ArcaEx would publish an Indicative Match Price of 41.25 and a match

[5] *See* PCXE Rule 1.1(aa) (definition of ''Nasdaq Security'').

[6] *See* proposed PCXE Rule 7.31(dd) (definition of Market-on-Close Order (''MOC'')).

[7] *See* proposed PCXE Rule 7.31(ee) (definition of Limit-on-close Order (''LOC'')).

[8] *See* PCXE Rule 1.1(q) (definition of ''Timed Order'').

[9] *See* PCXE Rule 1.1(r). Pursuant to this current proposed rule change, the definition of ''Indicative Match Price'' in PCXE Rule 1.1(r) would be changed to reflect the inclusion of the Closing Auction.

[10] The proposed rule change also provides for the publication of the Indicative Match Price and Imbalance following a trading halt.

volume of 3000 shares, but would not publish an Imbalance.

If an Indicative Match Price does not exist, ArcaEx would indicate, via electronic means, that such a price does not exist.

If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape, were equal to or greater than a predetermined amount, as determined from time to time by the PCXE, ArcaEx would assign a ''SIG'' designator to the Indicative Match Price and publish the designator via electronic means as determined by the PCXE.

Any Imbalance in the Closing Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority: (1) Market-on-Close Orders; (2) Limited Priced Orders designated for the Late Trading Session and entered prior to the Closing Auction; and (3) Limit-on-Close Orders.

Between 1:00 p.m. (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders eligible for the Late Trading Session may be cancelled, but Market-on-Close Orders and Limit-on-Close Orders may not be cancelled. In addition, between 1:00 p.m. (Pacific Time) and the conclusion of the Closing Auction, Market-on-Close Orders and Limit-on-Close Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance; however, any time before the Closing Auction, Market-on-Close Orders and Limit-on-Close Orders that create equilibrium and thereafter increase the Imbalance would be rejected.[11]

ArcaEx would determine the price of the Closing Auction as follows: if there is no Imbalance, orders would be executed in the Closing Auction at the Indicative Match Price as of 1:02 p.m. (Pacific Time.) Conversely, if an Imbalance exists, or if equilibrium exists between buy Market-on-Close Orders and sell Market-on-Close Orders and an Indicative Match Price does not exist, as many buy Market-on-Close Orders and sell Market-on-Close Orders as possible would be matched, on a time priority basis as follows: (1) At the midpoint of the NBBO[12] at 1:02 p.m. (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or (2) at the locked price if the NBBO is locked at 1:02 p.m. (Pacific Time); or (3) if the NBBO is crossed at 1:02 p.m. (Pacific Time) and ArcaEx is a party to the crossed market, at the bid (offer) side of the BBO[13] which is crossed with the NBBO; or (4) if the NBBO is crossed at 1:02 p.m. (Pacific Time) and ArcaEx is not a party to the crossed market, at the last regular sale during market hours as determined by the consolidated tape. Such executions would be designated with a modifier to identify them as Closing Auction trades. The Market-on-Close Orders that are eligible for, but not executed in the Closing Auction, would be cancelled immediately upon conclusion of the Closing Auction.

Limited Price Orders designated for the Late Trading Session entered before 1 p.m. (Pacific Time) would participate in the Closing Auction. Limited Price Orders designated for the Late Trading Session entered after 1 p.m. (Pacific Time) would become eligible for execution at 1:02 p.m. (Pacific Time) or at the conclusion of the Closing Auction, whichever is later.

Finally, the PCX proposes that in the event a stock is halted and scheduled to re-open prior to 12:55 p.m. (Pacific Time), a Halt Auction and Closing Auction would be conducted. However, in the event a stock is halted and is thereafter scheduled to re-open at 12:55 p.m. (Pacific Time) or later, no Closing Auction would occur for that security. Instead, a Halt Auction would be conducted.[14]

The proposed rule change, as amended, is intended to expand the trading auction process by adding the Closing Auction to the Late Trading Session and to clarify the type of orders available for execution during the Late Trading Session.

2. Statutory Basis

The PCX believes that the proposed rule change, as amended, is consistent with Section 6(b)[15] of the Act, in general, and furthers the objectives of Section 6(b)(5),[16] in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments concerning the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

[11] Market-on-Close Orders and Limit-on-Close Orders that are of a size to ''flip'' the Imbalance from a buy to a sell would be rejected. The following is an example of the foregoing: (1) Limit-on-Close Order to buy 1000 shares; (2) Limit-on-Close Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A Market-on-Close Order or Limit-on-Close Order to buy 500 shares would be permitted because it achieves equilibrium. However, a Market-on-Close Order or Limit-on-Close Order to buy 1000 shares would not be permitted as it would inverse the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

[12] *See* PCXE Rule 1.1(dd) (definition of ''national best bid or offer'' (''NBBO'')).

[13] *See* PCXE Rule 1.1(h) (definition of ''best bid or offer'' (''BBO'')).

[14] *See* proposed PCXE Rule 7.3(g)(1).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

SR–PCX–2003–24 and should be submitted by November 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26645 Filed 10–21–03; 8:45 am]

BILLING CODE 8010–01–U

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner; Cost-of-Living Increase and Other Determinations for 2004

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 2.1 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2003;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2004 to $564 for an eligible individual, $846 for an eligible individual with an eligible spouse, and $282 for an essential person;

(3) The student earned income exclusion to be $1,370 per month in 2004 but not more than $5,520 in all of 2004;

(4) The dollar fee limit for services performed as a representative payee to be $31 per month ($59 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2004;

(5) The national average wage index for 2002 to be $33,252.09;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $87,900 for remuneration paid in 2004 and self-employment income earned in taxable years beginning in 2004;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2004 to be $970 and $2,590;

(8) The dollar amounts (''bend points'') used in the primary insurance amount benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2004 to be $612 and $3,689;

(9) The dollar amounts (''bend points'') used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2004 to be $782, $1,129, and $1,472;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2004 to be $900;

(11) The ''old-law'' contribution and benefit base to be $65,100 for 2004;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2004 to be $1,350, and the corresponding amount for non-blind disabled persons to be $810;

(13) The earnings threshold establishing a month as a part of a trial work period to be $580 for 2004; and

(14) Coverage thresholds for 2004 to be $1,400 for domestic workers and $1,200 for election workers.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. Information relating to this announcement is available on our Internet site at *http://www.socialsecurity.gov/OACT/COLA/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2003 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2002 (section 215(a)(1)(D)), the OASDI fund ratio for 2003 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2004 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2004 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2004 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2004 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2004 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 2.1 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 2.1 percent for individuals eligible for December 2003 benefits, payable in January 2004. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 2.1 percent effective for payments made for the month of January 2004 but paid on December 31, 2003. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 2003 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2003, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2003, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2002 to the third quarter of 2003.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2002, is: for July 2002, 176.1; for August 2002, 176.6; and for September 2002, 177.0. The arithmetic mean for this calendar quarter is 176.6. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2003, is: for July 2003, 179.6; for August 2003, 180.3; and for September 2003, 181.0. The arithmetic mean for this calendar quarter is 180.3. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2003, exceeds that for the calendar quarter ending September 30, 2002 by 2.1 percent (rounded to the nearest 0.1), a cost-of-living benefit increase of 2.1 percent is effective for benefits under title II of the Act beginning December 2003.

[17] 17 CFR 200.30–3(a)(12).

Section 215(i) also specifies that an automatic benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the ''OASDI fund ratio'' for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. (The expenditures in the ratio's denominator exclude transfer payments between the two trust funds, and reduce any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.) For 2003, the OASDI fund ratio is assets of $1,377,965 million divided by estimated expenditures of $475,178 million, or 290.0 percent. Because the 290.0-percent OASDI fund ratio exceeds 20.0 percent, the automatic benefit increase for December 2003 is not limited.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of workers and family members for whom eligibility for benefits (*i.e.*, the worker's attainment of age 62, or disability or death before age 62) occurred before 2004, benefits will increase by 2.1 percent beginning with benefits for December 2003 which are payable in January 2004. In the case of first eligibility after 2003, the 2.1 percent increase will not apply.

For eligibility after 1978, benefits are generally determined using a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. You may obtain a copy of this table by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235. The table is also available on the Internet at address *http://www.socialsecurity.gov/OACT/ProgData/tableForm.html.*

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner will publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as ''special minimum'' benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 ''years of coverage.'' To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the ''old-law'' contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.1 percent automatic benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2003

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	$31.10	$47.30
12	63.00	95.30
13	95.20	143.30
14	127.00	191.00
15	158.80	238.80
16	190.80	287.10
17	222.90	335.20
18	254.90	383.00
19	286.70	431.00
20	318.70	478.80
21	350.90	527.20
22	382.50	574.90
23	415.00	623.60
24	446.90	671.20
25	478.80	718.60
26	511.20	767.50
27	542.80	815.20
28	574.80	863.00
29	606.70	911.30
30	638.70	958.80

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, maximum SSI Federal benefit amounts for the aged, blind, and disabled will increase by 2.1 percent effective January 2004. For 2003, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$552, $829, and $277, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $6,633.23, $9,948.73, and $3,324.22. For 2004, these yearly unrounded amounts increase by 2.1 percent to $6,772.53, $10,157.65, and $3,394.03, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2004, are $6,768, $10,152, and $3,384. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2004 $564, $846, and $282, respectively. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United States. Section 805 provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month.'' Thus the monthly benefit for 2004 under this provision is 75 percent of $564, or $423.00.

Student Earned Income Exclusion

A blind or disabled child, who is a student regularly attending school, college, or university, or a course of vocational or technical training, can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2003 is $1,340 per month but not more than $5,410 in all of 2003. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2004, we increase the corresponding unrounded amount for 2003 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2003 is $1,342.07. We increase this amount by 2.1 percent to $1,370.25, which we then round to $1,370. Similarly, we increase the unrounded yearly amount for 2003, $5,409.89, by 2.1 percent to $5,523.50 and round this to $5,520. Thus the maximum amount of the income exclusion applicable to a student in 2004 is $1,370 per month but not more than $5,520 in all of 2004.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $30 per month ($58 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that

payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Thus we increase the current amounts by 2.1 percent to $31 and $59 for 2004.

National Average Wage Index for 2002

General

Under various provisions of the Act, several amounts increase automatically with annual increases in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or ''bend points,'' in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the ''old-law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals; and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase automatically under regulatory requirements. The amounts are (1) the substantial gainful activity amount applicable to non-blind disabled persons, and (2) the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

Computation

The determination of the national average wage index for calendar year 2002 is based on the 2001 national average wage index of $32,921.92 announced in the **Federal Register** on October 25, 2002 (67 FR 65620), along with the percentage increase in average wages from 2001 to 2002 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $31,581.97 and $31,898.70 for 2001 and 2002, respectively. To determine the national average wage index for 2002 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2001 national average wage index of $32,921.92 by the percentage increase in average wages from 2001 to 2002 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent).

Amount

The national average wage index for 2002 is $32,921.92 times $31,898.70 divided by $31,581.97, which equals $33,252.09. Therefore, the national average wage index for calendar year 2002 is $33,252.09.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $87,900 for remuneration paid in 2004 and self-employment income earned in taxable years beginning in 2004.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2004 is 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2004 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 2004, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2004, at the rate of 2.9 percent.)

(b) It is the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2004 shall be the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2002 to that for 1992; or (2) the current base ($87,000). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2002 ($33,252.09 as determined above) to that for 1992 ($22,935.42) produces the amount of $87,858.72. We round this amount to $87,900. Because $87,900 exceeds the current base amount of $87,000, the OASDI contribution and benefit base is $87,900 for 2004.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the normal retirement age (NRA) has earnings in excess of the applicable retirement earnings test exempt amount. (NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's primary insurance amount. The NRA is age 65 for those born before 1938, and it gradually increases to age 67.) A higher exempt amount applies in the year in which a person attains his/her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Pub. L. 104–121, provides formulas for determining the monthly exempt amounts. The corresponding annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries who are under NRA and who will not attain NRA in 2004, the lower monthly exempt amount for 2004 shall be the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2002 to that for 1992; or (2) the 2003 monthly exempt amount ($960). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Under the formula applicable to beneficiaries attaining NRA in 2004, the higher monthly exempt amount for 2004 shall be the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2002 to that for 2000; or (2) the 2003 monthly exempt amount ($2,560). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of

$670 by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1992 ($22,935.42) produces the amount of $971.38. We round this to $970. Because $970 is larger than the corresponding current exempt amount of $960, the lower retirement earnings test monthly exempt amount is $970 for 2004. The corresponding lower annual exempt amount is $11,640 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2002 ($33,252.09) to that for 2000 ($32,154.82) produces the amount of $2,585.31. We round this to $2,590. Because $2,590 is larger than the corresponding current exempt amount of $2,560, the higher retirement earnings test monthly exempt amount is $2,590 for 2004. The corresponding higher annual exempt amount is $31,080 under the retirement earnings test.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's ''average indexed monthly earnings'' to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or ''index,'' a worker's earnings to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2004, we divide the national average wage index for 2002, $33,252.09, by the national average wage index for each year prior to 2002 in which the worker had earnings. Then we multiply the actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, by the corresponding ratio to obtain the worker's indexed earnings for each year before 2002. We consider any earnings in 2002 or later at face value, without indexing. We then compute the average indexed monthly earnings for determining the worker's primary insurance amount for 2004.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the ''bend points'' of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2004, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2002 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1977 ($9,779.44) produces the amounts of $612.04 and $3,689.22. We round these to $612 and $3,689. Accordingly, the portions of the average indexed monthly earnings to be used in 2004 are the first $612, the amount between $612 and $3,689, and the amount over $3,689.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2004, or who die in 2004 before becoming eligible for benefits, their primary insurance amount will be the sum of

(a) 90 percent of the first $612 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $612 and through $3,689, plus

(c) 15 percent of their average indexed monthly earnings over $3,689.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the ''bend points'' of the family-maximum formula.

To obtain the bend points for 2004, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2002 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1977 ($9,779.44) produces the amounts of $782.05, $1,128.87, and $1,472.29. We round these amounts to $782, $1,129, and $1,472. Accordingly, the portions of the primary insurance amounts to be used in 2004 are the first $782, the amount between $782 and $1,129, the amount between $1,129 and $1,472, and the amount over $1,472.

Consequently, for the family of a worker who becomes age 62 or dies in 2004 before age 62, we will compute the

total amount of benefits payable to them so that it does not exceed

(a) 150 percent of the first $782 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $782 through $1,129, plus

(c) 134 percent of the worker's primary insurance amount over $1,129 through $1,472, plus

(d) 175 percent of the worker's primary insurance amount over $1,472.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2004 is $900. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2004 shall be the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 2002 to that for 1976; or (2) the current amount of $890. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1976 ($9,226.48) produces the amount of $901.00. We then round this amount to $900. Because $900 exceeds the current amount of $890, the quarter of coverage amount is $900 for 2004.

"Old-Law" Contribution and Benefit Base

General

The "old-law" contribution and benefit base for 2004 is $65,100. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. We compute the base under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The "old-law" contribution and benefit base shall be the larger of: (1) The 1994 "old-law" base ($45,000) multiplied by the ratio of the national average wage index for 2002 to that for 1992; or (2) the current "old-law" base ($64,500). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 "old-law" contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1992 ($22,935.42) produces the amount of $65,241.62. We round this amount to $65,100. Because $65,100 exceeds the current amount of $64,500, the "old-law" contribution and benefit base is $65,100 for 2004.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals. Both SGA amounts increase in accordance with increases in the national average wage index.

Computation

The monthly SGA amount for statutorily blind individuals under title II for 2004 shall be the larger of: (1) Such amount for 1994 multiplied by the ratio of the national average wage index for 2002 to that for 1992; or (2) Such amount for 2003. The monthly SGA amount for non-blind disabled individuals for 2004 shall be the larger of: (1) Such amount for 2000 multiplied by the ratio of the national average wage index for 2002 to that for 1998; or (2) such amount for 2003. In either case, if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1992 ($22,935.42) produces the amount of $1,348.33. We then round this amount to $1,350. Because $1,350 is larger than the current amount of $1,330, the monthly SGA amount for statutorily blind individuals is $1,350 for 2004.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1998 ($28,861.44) produces the amount of $806.49. We then round this amount to $810. Because $810 is larger than the current amount of $800, the monthly SGA amount for non-blind individuals is $810 for 2004.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period

as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2003, any month in which earnings exceed $570 is considered a month of services for an individual's trial work period. In 2004, this monthly amount increases to $580.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2004, used to determine whether a month is part of a trial work period, is such amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2002 to that for 1999, or, if larger, such amount for 2003. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1999 ($30,469.84) produces the amount of $578.40. We then round this amount to $580. Because $580 is larger than the current amount of $570, the monthly earnings threshold is $580 for 2004.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2004, this threshold is $1,400. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2004 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2002 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1993 ($23,132.67) produces the amount of $1,437.45. We then round this amount to $1,400. Accordingly, the domestic employee coverage threshold amount is $1,400 for 2004.

Election Worker Coverage Threshold

General

The minimum amount an election worker must earn so that such earnings are covered under Social Security or Medicare is the election worker coverage threshold. For 2004, this threshold is $1,200. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election worker coverage threshold amount for 2004 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2002 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2002 ($33,252.09) compared to that for 1997 ($27,426.00) produces the amount of $1,212.43. We then round this amount to $1,200. Accordingly, the election worker coverage threshold amount is $1,200 for 2004.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 16, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–26642 Filed 10–21–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement, Material Qualification and Equivalency for Polymer Matrix Composite Material Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of policy statement.

SUMMARY: This notice announces the issuance of policy statement PS–ACE100–2002–006, Material Qualification and Equivalency for Polymer Matrix Composite Material Systems. It enables composite material suppliers to qualify composite material to a procedure acceptable to the FAA. An airframe manufacturer can then specify this composite material to fabricate aircraft parts and perform a smaller subset of testing to substantiate their control of material and fabrication processes.

DATES: Policy statement PS–ACE100–2002–006 was issued by the Manager of the Small Airplane Directorate on September 15, 2003.

How to Obtain Copies: A paper copy of policy statement PS–ACE100–2002–006 may be obtained by contacting Mr. Lester Cheng, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, MO 64106. The policy statement will also be available on the Internet at *http://www.airweb.faa.gov/Policy.*

Issued in Kansas City, Missouri, on October 8, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26558 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14652]

Commercial Driver's License Standards; Isuzu Motors America, Inc. Exemption Application; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; correction.

SUMMARY: FMCSA published a document in the **Federal Register** of October 16, 2003, 68 FR 59677, which contained two incorrect dates. This notice is to notify the public of these errors and make corrections to the October 16, 2003 notice. The corrections change the *exemption effective date* to October 16, 2003, and the *exemption expiration date* to October 17, 2005. The exemption requirements remain unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Transportation Specialist, Office of Bus and Truck Standards and Operations, (202) 366–2990.

SUPPLEMENTARY INFORMATION:

Background

The effective date for the exemption was announced in the October 16, 2003 notice as starting November 17, 2003. This was an error. The effective date

should have been October 16, 2003. Due to an oversight by the Office of the Federal Register, the expiration date for the exemption was announced as expiring October 17, 2003. The expiration date should have been October 17, 2005.

Corrections

In the **Federal Register** of October 16, 2003, in FR Doc. 03–26119, on page 59677, in the first column of the page, correct the **DATES** to read: **DATES:** The exemption is effective October 16, 2003. The exemption expires October 17, 2005.

Issued on: October 16, 2003.

Pamela M. Pelcovits,

Director, Office of Policy, Plans, and Regulations.

[FR Doc. 03–26686 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Capital City Insurance Company, Inc.

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, on page 39193 to reflect this addition: Capital City Insurance Company, Inc. Business Address: P.O. Box 212157, Columbia, SC 29221–2157. Phone: (803) 731–7728. Underwriting Limitation b/: $3,110,000. Surety Licenses c/: AL, AR, GA, IL, LA, MS, MO, NC, OK, PA, SC, TN, TX, VA, WV. Incorporated IN: South Carolina.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/*. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: October 14, 2003.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–26584 Filed 10–21–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Thursday, November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Tilghman, National Public Liaison, CL:NPL:P, Room 7569 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–622–6440 (not a toll-free number). E-mail address: **public_liaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRSAC will be held on Thursday, November 6, 2003, from 9 a.m. to 4 p.m. in Room 2140, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed include: Offers-in-Compromise, K–1 Matching Program, National Research Program, Tax Shelters, Exam Cycle Time, Post-filing Design Project, Earned Income Tax Credit, Individual Tax Identification Numbers, and Electronic Filing. Reports from the three IRSAC sub-groups, Wage & Investment, Small Business/Self-Employed, and Large and Mid-size Business will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRSAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Jacqueline Tilghman to confirm your attendance. Ms. Tilghman can be reached at (202)–622–6440. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building. Should you wish the IRSAC to consider a written statement, please call (202) 622–6440, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:P, 1111 Constitution Avenue, NW., Room 7569 IR, Washington, DC 20224 or e-mail: **public_liaison@irs.gov.*

Dated: October 15, 2003.

Cynthia A. Vanderpool,

Designated Federal Official, Acting Branch Chief, Liaison/Tax Forum Branch.

[FR Doc. 03–26685 Filed 10–21–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 204

Wednesday, October 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030930242–3242–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals in FY 2004 and FY 2005

Correction

In notice document 03–26106 beginning on page 59581 in the issue of Thursday, October 16, 2003, make the following correction:

On page 59582, Attachment 1 should appear as follows:

ATTACHMENT 1—PROPOSED REVISION TO FY 2004 ANNUAL MATERIAL PLAN (AMP) AND PROPOSED FY 2005 AMP

Material	Units	Current FY 2004 quantity	Revised FY 2004 quantity	Proposed FY 2005 quantity
Aluminum Oxide, Abrasive	ST	6,000		[1] 6,000
Bauxite, Refractory	LCT	[1] 43,000		[1] 43,000
Beryl Ore	ST	[1] 4,000		[1] 4,000
Beryllium Metal	ST	40		40
Beryllium Copper Master Alloy	ST	[1] 1,200		[1] 1,200
Cadmium	LB	[1] 400,000		0
Celestite	SDT	[1] 12,794		[1] 6,000
Chromite, Chemical	SDT	[1] 100,000		[1] 100,000
Chromite, Refractory	SDT	[1] 100,000		[1] 100,000
Chromium, Ferro	ST	150,000	110,000	110,000
Chromium, Metal	ST	500		500
Cobalt	LB Co	6,000,000		6,000,000
Columbium Concentrates (Minerals)	LB Cb	560,000		560,000
Columbium Metal Ingots	LB Cb	20,000		20,000
Diamond Stone	ct	[1] 600,000		[1] 400,000
Fluorspar, Acid Grade	SDT	[1] 12,000		[1] 12,000
Fluorspar, Metallurgical Grade	SDT	[1] 60,000		[1] 60,000
Germanium	KG	8,000		8,000
Graphite	ST	[1] 2,000		0
Iodine	LB	1,000,000		1,000,000
Jewel Bearings	PC	[1] 82,051,558		[1] 82,051,558
Kyanite	SDT	0	50	0
Lead	ST	60,000		[1] 60,000
Manganese, Battery Grade Natural	SDT	30,000		30,000
Manganese, Battery Grade Synthetic	SDT	[1] 3,011		[1] 3,011
Manganese, Chemical Grade	SDT	40,000		[1] 40,000
Manganese, Ferro	ST	50,000		50,000
Manganese, Metal Electrolytic	ST	2,000		[1] 2,000
Manganese, Metallurgical Grade	SDT	[1] 250,000		[1] 250,000
Mica (All Types)	LB	[1] 5,000,000		[1] 1,000,000
Palladium	Tr Oz	[1] [3] 200,000		[1] [3] 100,000
Platinum	Tr Oz	[1] 25,000		[1] 25,000
Platinum—Iridium	Tr Oz	6,000		6,000
Quartz Crystals	LB	[1] 150,000		[1] 25,000
Quinidine	Oz	[1] 2,211,122		0
Sebacic Acid	LB	600,000		[1] 600,000

ATTACHMENT 1—PROPOSED REVISION TO FY 2004 ANNUAL MATERIAL PLAN (AMP) AND PROPOSED FY 2005 AMP—Continued

Material	Units	Current FY 2004 quantity	Revised FY 2004 quantity	Proposed FY 2005 quantity
Talc	ST	[1] 1,000		[1] 1,000
Tantalum Carbide Powder	LB Ta	[1] 4,000		[1] 4,000
Tantalum Metal Ingots	LB Ta	[1] 40,000		[1] 40,000
Tantalum Metal Powder	LB Ta	[1] 40,000		[1] 40,000
Tantalum Minerals	LB Ta	500,000		[1] 500,000
Tantalum Oxide	LB Ta	20,000		20,0001
Thorium Nitrate	LB	[1 2] 7,100,000	.....	[1 2] 7,100,000
Tin	MT	12,000		12,000
Titanium Sponge	ST	7,000		[1] 7,000
Tungsten, Ferro	LB W	300,000		300,000
Tungsten, Metal Powder	LB W	300,000		300,000
Tungsten Ores & Concentrates	LB W	4,000,000		4,000,000
Vegetable Tannin Extract, Chestnut	LT	0	250	[1] 250
Vegetable Tannin Extract, Quebracho	LT	50,000		[1] 50,000
Vegetable Tannin Extract, Wattle	LT	0	6,500	[1] 6,500
Zinc	ST	50,000		50,000

Notes:

[1] Actual quantity will be limited to remaining sales authority or inventory.

[2] The radioactive nature of this material may restrict sales or disposal options. Efforts are underway to determine the environmentally and economically feasible disposition of the material.

[3] Pending legislative authority.

[FR Doc. C3–26106 Filed 10–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 22, 2003

Part II

Department of Homeland Security

Coast Guard

33 CFR Parts 2, 101, et al.

46 CFR Parts 2, 31, et al.

National Maritime Security Initiatives; Area Maritime Vessel, Facility, and Outer Continental Shelf Security; Automatic Indentification System, Vessel Carriage Requirement; Final Rules

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 2, 101 and 102

[USCG–2003–14792]

RIN 1625–AA69

Implementation of National Maritime Security Initiatives

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has published a series of final rules in today's **Federal Register** that adopt, with changes, the series of temporary interim rules published July 1, 2003, which promulgate maritime security requirements mandated by the Maritime Transportation Security Act of 2002.

This final rule establishes the general regulations for maritime security and provides the summary of the cost and benefit assessments for the entire suite of final rules published today. The discussions provided within each of the other final rules are limited to the specific requirements they contain.

DATES: This final rule is effective November 21, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14792 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

You may inspect the material incorporated by reference at room 1409, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–6277. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Captain Kevin Dale (G-MPS), U.S. Coast Guard by telephone 202–267–6193 or by electronic mail at *kdale@comdt.uscg.mil.* If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled ''Implementation of National Maritime Security Initiatives'' in the **Federal Register** (68 FR 39240). This temporary interim rule was one of six temporary interim rules published in the July 1, 2003, issue of the **Federal Register**, each addressing maritime security. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41914).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some of which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' that contained comments in that temporary interim rule, plus comments on the ''Vessel Security'' temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same comment to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider comments received after the period for receipt of comments closed on July 31, 2003.

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the ''Discussion of Comments and Changes'' section.

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. To view a copy of the complete regulatory text with the changes shown in this final rule, see *http://www.uscg.mil/hq/g-m/mp/index.htm.*

Background and Purpose

In the aftermath of September 11, 2001, the Commandant of the Coast Guard reaffirmed the Coast Guard's Maritime Homeland Security mission and its lead role-in coordination with the Department of Defense; Federal, State, Indian Tribal, and local agencies; owners and operators of vessels and marine facilities; and others with interests in our nation's Marine Transportation System (MTS)—to detect, deter, disrupt, and respond to attacks against U.S. territory, population, vessels, facilities, and critical maritime infrastructure by terrorist organizations.

In November 2001, the Commandant of the Coast Guard addressed the International Maritime Organization (IMO) General Assembly, urging that body to consider an international scheme for port and shipping security. Recommendations and proposals for comprehensive security requirements, including amendments to the International Convention for Safety of Life at Sea, 1974, (SOLAS) and the new International Ship and Port Facility Security Code (ISPS Code), were developed at a series of intersessional maritime security work group meetings held at the direction of the IMO's Maritime Safety Committee.

The Coast Guard submitted comprehensive security proposals in January 2002 to the intersessional maritime security work group meetings based on work we had been coordinating since October 2001. Before each intersessional meeting, the Coast Guard held public meetings and coordinated several outreach meetings with representatives from major U.S. and foreign associations for shipping, labor, and ports. We also discussed maritime security at each of our Federal Advisory Committee meetings and held meetings with other Federal agencies with security responsibilities.

On January 28–30, 2002, the Coast Guard held a public workshop in Washington, DC, attended by more than 300 individuals, including members of the public and private sectors, and representatives of the national and international marine community (66 FR 65020, December 17, 2001; docket number USCG–2001–11138). Their comments indicated the need for specific threat identification, analysis of threats, and methods for developing performance standards to plan for response to maritime threats. Additionally, the public comments stressed the importance of uniformity in the application and enforcement of requirements and the need to establish

threat levels with a means to communicate threats to the MTS.

At the Marine Safety Committee's 76th session and subsequent discussions internationally, we considered and advanced U.S. proposals for maritime security that took into account this public and agency input. The Coast Guard considers both the SOLAS amendments and the ISPS Code, as adopted by the IMO Diplomatic Conference in December 2002, to reflect current industry, public, and agency concerns. The entry into force date of both the ISPS Code and related SOLAS amendments is July 1, 2004, with the exception of the Automatic Identification System (AIS). The AIS implementation date for vessels on international voyages was accelerated to no later than December 31, 2004, depending on the particular class of SOLAS vessel.

Domestically, the Coast Guard had existing regulations for the security of large passenger vessels, found in 33 CFR parts 120 and 128. The Coast Guard issued complementary guidance in the Navigation and Vessel Inspection Circular (NVIC) 3–96, Change 1, Security for Passenger Vessels and Passenger Terminals. Prior to development of additional regulations, the Coast Guard, with input from the public, assessed the current state of port and vessel security and their vulnerabilities. To accomplish this, the Coast Guard conducted the previously mentioned January 2002 public workshop to assess existing MTS security standards and measures and to gather ideas on possible improvements. Based on the comments received at the workshop, the Coast Guard cancelled NVIC 3–96 (Security for Passenger Vessels and Passenger Terminals) and issued a new NVIC 4–02 (Security for Passenger Vessels and Passenger Terminals), which was developed in conjunction with the International Council of Cruise Lines, that incorporated guidelines consistent with international initiatives (the ISPS Code and SOLAS). Additional NVICs were also published to further guide maritime security efforts, including NVIC 9–02 (Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports), NVIC 10–02 (Security Guidelines for Vessels), and NVIC 11–02 (Security Guidelines for Facilities). The documents are available in the public docket (USCG–2002–14069) for review at the locations under **ADDRESSES.**

Organization

We have kept the maritime security regulations segmented in six separate final rules. For ease of reading and comprehension, the final rules carry the same organization as the temporary interim rules. Five of the final rules complete the new subchapter H, which was added by the temporary interim rules, in chapter I of title 33 of the Code of Federal Regulations (subchapter H). The final rule ''Automatic Identification System; Vessel Carriage Requirement'' (USCG–2003–14757), published elsewhere in today's **Federal Register**, finalizes the changes made to parts 26, 161, 164, and 165 in Title 33 of the Code of Federal Regulations regarding AIS. A brief description of each of the six final rules follows:

1. *Implementation of National Maritime Security Initiatives.* In the preamble to this final rule (USCG–2003–14792), we discuss the background and purpose for all of the final rules. We discuss the comments and changes made to parts 101 and 102 of the new subchapter H. We also include a summary of the costs and benefits associated with implementing the requirements of subchapter H, as well as the AIS final rule.

2. *Area Maritime Security (AMS).* In the preamble of the ''Area Maritime Security'' final rule (USCG–2003–14733), found elsewhere in today's **Federal Register**, we discuss the comments and changes made to part 103 of subchapter H and discuss the cost and benefit assessment specific to that part.

3. *Vessel Security.* In the preamble of the ''Vessel Security'' final rule (USCG–2003–14749), found elsewhere in today's **Federal Register**, we discuss the comments and changes made to part 104 of subchapter H, to 33 CFR part 160, and to 46 CFR parts 2, 31, 71, 91, 115, 126, and 176. We also discuss the cost and benefit assessments specific to those parts.

4. *Facility Security.* In the preamble of the ''Facility Security'' final rule (USCG–2003–14732), found elsewhere in today's **Federal Register**, we discuss the comments and changes made to part 105 of subchapter H and discuss the cost and benefit assessments specific to that part.

5. *Outer Continental Shelf (OCS) Facility Security.* In the preamble of the ''Outer Continental Shelf Facility Security'' final rule (USCG–2003–14759), found elsewhere in today's **Federal Register**, we discuss the comments and changes to part 106 of subchapter H and discuss the cost and benefit assessments specific to that part.

6. *Automatic Identification Systems (AIS).* In the preamble of the ''Automatic Identification System; Vessel Carriage Requirement'' final rule (USCG–2003–14757), found elsewhere in today's **Federal Register**, we discuss the comments and changes made to 33 CFR parts 26, 161, 164, and 165 and discuss the cost and benefit assessments specific to those parts.

Coordination With SOLAS Requirements

For each of the final rules, the requirements of the Maritime Transportation Security Act (MTSA), section 102, align, where appropriate, with the security requirements in the SOLAS amendments and the ISPS Code. However, the MTSA has a broader application that includes domestic vessels and facilities. Thus, where appropriate, we have implemented the MTSA through the requirements in the SOLAS amendments and the ISPS Code, parts A and B. Further discussion on this coordination can be found in the preamble of the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), under ''Coordination with SOLAS Requirements.''

Discussion of Comments and Changes

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. For example, discussions of comments that requested clarification or changes to the Declaration of Security procedures are duplicated in the preambles to parts 104, 105, and 106. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG–2003–14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

Subpart A—General

This subpart concerns definitions, applicability, equivalents, and other subjects of a general nature applicable to all of subchapter H.

Two commenters requested that the authority citation for 46 CFR part 107 include the following citations: 46 U.S.C. Chapter 701; Executive Order 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; and Department of Homeland Security Delegation No. 0170.1.

We are not amending the authority citation because the regulations in 46 CFR part 107 are not issued under the citations that the commenters propose to add. Additionally, these changes are beyond the scope of this final rule.

We received five comments regarding our implementation of the regulations. Three commenters strongly supported the implementation of the rules, stating that maritime entities should be regulated by a single law. One commenter supported the Coast Guard's implementation of the regulations as written, because of a security breach that occurred on a ferry within the past year. One commenter acknowledged and commended the Coast Guard for the positive way it responded to previously submitted comments.

Two commenters commended the Coast Guard for ensuring that the interim rules resembled, in large part, the requirements adopted in the SOLAS amendments and the ISPS Code.

We received 10 comments on the Coast Guard's interaction with other Federal agencies. Seven commenters pointed out the need for consistency and integration throughout the Department of Homeland Security (DHS) and other Federal agencies in matters affecting maritime security. Another commenter asked us to work with the Nuclear Regulatory Commission to develop consistent and compatible regulations. One commenter stated that the Coast Guard should develop a memorandum of understanding with the Bureau of Customs and Border Protection (BCBP) to clarify the roles of the two agencies.

We agree with the commenters regarding the need for consistency and integration throughout DHS and other Federal agencies. In developing our regulations, we worked closely with many other agencies of DHS (*e.g.*, the Transportation Security Administration (TSA), BCBP), the Department of Transportation (DOT) (*e.g.*, the Maritime Administration (MARAD), the Research and Special Programs Administration (RSPA)), the Environmental Protection Agency (EPA), the Department of Energy (DOE), and the Minerals Management Service (MMS), among others. These regulations reflect input from all the Federal agencies that have a responsibility in the development and implementation of homeland security regulations covering all modes of transportation. We intend to continue these close working relationships as additional issues come to light, and we will continue to define each of our roles to ensure coordination and avoid duplication. Coordination with State and local agencies will be addressed in the plan developed by each AMS Committee, which is established by the cognizant COTP.

We received comments from EPA regarding the effects of our regulations on EPA-regulated oil facilities. These comments focused primarily on the potential overlapping provisions of 33 CFR part 105 and 40 CFR part 112. Overlap exists in four major areas: Notification of security incidents, fencing and monitoring, evacuation procedures, and security assessments. In cases of overlapping provisions for oil facilities regulated both in parts 105 and 112, the requirements in our final rules and EPA rulemakings do not supplant one another. Additionally, an EPA-regulated facility need not amend the facility's Spill Prevention Control and Countermeasure Plan or Facility Response Plan, as we first stated in the temporary interim rule (68 FR 39251) (part 101). We will be working further with EPA in the implementation of these final rules to minimize the burden to the facilities while ensuring that these facilities are secure. It is our belief that response plans for EPA-regulated oil facilities will serve as an excellent foundation for security plans that may be required under our regulations.

EPA asked for clarification for facilities adjacent to the navigable waters that handle or store cargo that is hazardous or a pollutant but may not be marine transportation related facilities. These facilities are covered by parts 101 through 103 of subchapter H and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various Maritime Security (MARSEC) Levels that may apply to them. The AMS Assessment may reveal that these EPA-regulated facilities may be involved in a transportation security incident and the COTP may direct these facilities, through orders issued under existing COTP authority, to implement security measures based on the facilities' operations and the MARSEC Level. We encourage owners and operators of these EPA-regulated facilities, as well as representatives from EPA, to participate in AMS Committee activities.

EPA asked for further clarification on drills and exercises requirements. As we stated in the temporary interim rule, non-security drills and exercises may be combined with security drills to minimize burden. Additionally, EPA-regulated facilities that conduct drills not related to security are encouraged to communicate with the local COTP and coordinate their drills at the area level. It is our intention to give facilities and vessels in the port area as much notice as practicable prior to an AMS Plan exercise to reduce the burden to those entities. Again, we encourage owners and operators of these EPA-regulated facilities, and EPA, to participate in AMS Committee activities to maximize coordination and minimize burden.

EPA asked us to clarify the role of Area Contingency Plans with the requirements of our final rules. Our rules are intended to work in concert with Area Contingency Plans and do not preempt their requirements. We envision that many members of the Area Committees who are responsible for implementing Area Contingency Plans will also become members of the AMS Committee. This participation will help ensure that implementing an AMS Plan will not conflict with an Area Contingency Plan.

Finally, EPA asked for clarification on requirements for marine transportation related facilities that handle petroleum oil, non-petroleum oil, and edible oil. These facilities are directly regulated under § 105.105(a)(1) and must meet the requirements of part 105.

One commenter emphasized the importance of working with State homeland security representatives to resolve any State and local issues or barriers that might interfere with providing appropriate security for the maritime industry.

We stated in the temporary interim rule (68 FR 39255) (part 101) that we consider standards for private security guards a matter of private contract and of State and local law. We believe that it is important to encourage the review of these standards, and therefore intend to work with State homeland security representatives to resolve any issues or barriers with regard to these State and local standards.

Two commenters requested that we add to § 101.100 a new paragraph that would read: ''maritime security plans developed under these regulations and approved by the Coast Guard prepare vessel owners and operators, vessel crews, facility owners and operators, and facility personnel to deter to the maximum extent practicable maritime security incidents. The security measures identified in the plans provide deterrence and are not performance standards. The plans are approved on a set of assumptions regarding the security vulnerabilities recognized at the time of approval that may not be valid in an actual maritime security incident.'' The commenters stated that this paragraph would mirror the language of OPA 90 and clarify the intent of the subchapter.

We agree, in part, with the commenters and have amended

§ 101.100. However, to remain broad and consistent with the tone of the subchapter, we have rephrased the concept. In addition, we have made an editorial correction to § 101.100(a) to clarify that the ''purpose'' section applies to the entire subchapter.

The following discussion on § 101.105, Definitions, is detailed alphabetically to align, as much as possible, with the order of the terms listed in the section.

Two commenters recommended deleting the language in the definition of § 101.105 that explains that an AMS Committee can be a Port Security Committee established pursuant to NVIC 09–02, noting that this additional language is adequately covered by the regulations in part 103.

We agree that the additional language in the definition of AMS Committee is adequately explained in part 103, but we prefer to include this language for absolute clarity.

After reviewing the applicability of this subchapter to barge fleeting facilities, we determined that our reference to the Army Corps of Engineers permitting regulations in 33 CFR part 322 was not a complete representation of inland river permitting practices. Therefore, we have amended the definition of ''barge fleeting facility'' to clarify that these regulations apply to any barge fleeting facility permitted by the Army Corp of Engineers, whether under an individual permit, or a national or regional general permit. We believe that any barge fleeting area constitutes an obstacle under the definition of ''structure'' found in the Army Corps of Engineers regulations at 33 CFR 322.2.

One commenter asked us to define ''breach of security'' to clarify the intent of the regulations.

We agree with the commenter, and have added a definition for ''breach of security'' to § 101.105.

After reviewing the applicability of this subchapter to certain industrial vessels, we determined that vessels operating solely with dredge spoils may not be involved in a transportation security incident. Therefore, we amended the definition of ''cargo'' to clarify that dredge spoils are not considered cargo for purposes of part 104 of this chapter. This has the effect of removing certain dredges from coverage under part 104.

Eleven commenters requested that the Coast Guard clarify ''Certain Dangerous Cargo'' (CDC), stating that the rules should have one definition.

There is one definition for CDC that applies to all of the security regulations in subchapter H. Section 101.105 defines CDC as meaning ''the same as defined in 33 CFR 160.203.'' These comments revealed the need to correct the citation; the correct reference should be § 160.204, rather than § 160.203. We have amended § 101.105 accordingly. It should be noted that this change ensures consistency in Title 33. We are constantly reviewing and, when necessary, revising the CDC list based on additional threat and technological information. Changes to § 160.204 would affect the regulations in 33 CFR subchapter H because any changes to the CDC list would also affect the applicability of subchapter H. Any such changes would be the subject of a future rulemaking.

One commenter requested that the Company Security Officer be allowed to liaise with the Coast Guard at the District, Area, or Headquarters level rather than the local COTP.

We agree that effective communication may be established between the Company Security Officer and one or more COTPs and that for some companies, effective communications with the Coast Guard may be at the District, Area, or Headquarters level; therefore, we are amending the definition of ''Company Security Officer'' in § 101.105 to remove the specific reference to the COTP.

After further review of the regulations, we are adding the definition of ''dangerous goods and/or hazardous substances'' to clarify the use of that term within the regulations.

Three commenters asked for clarification on dangerous substances and devices. Two commenters stated that the definition of ''Dangerous substances and devices'' is too broad and could be construed to include illegal drugs, plants, ''and even Cuban cigars.'' The commenter noted, ''normal screening methods (x-ray and explosive-sniffing canines or wands) will not detect 'substances' nor are they necessarily an item that will cause 'damage or injury.' '' The commenter recommended amending the definition of ''Dangerous substances and devices'' to: (1) Specify that such substances and devices included only those that have ''the potential to cause a transportation security incident''; (2) add weapons, incendiaries, and explosives; and (3) specify that such substances and devices do not include drugs, alcohol, or ''other chemical or biological items not normally associated with transportation security screening.'' One commenter asked how to handle legal dangerous substances, such as fertilizer and gasoline.

We agree that the definition of dangerous substances and devices could be subject to differing interpretations. We therefore revised and simplified this definition by relating it to the potential of the dangerous substance or device to cause a transportation security incident similar to the commenter's recommendation. However, we disagree that we need to expressly exclude the items suggested because a transportation security incident is defined as a security incident resulting in a ''significant'' loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. We believe the definition of a transportation security incident is such that alcoholic beverages and drugs could not be interpreted as dangerous substances and devices as the term has been redefined. Such dangerous substances and devices would include, but not be limited to, explosives, incendiaries, and assault weapons.

One commenter asked to clarify the difference between ''vessel-to-vessel activity,'' as defined in § 101.105, and ''vessel-to-vessel interface,'' as used in part 104.

We find that the terms ''vessel-to-vessel activity'' and ''vessel-to-vessel interface'' are comparable and have chosen to use the term ''vessel-to-vessel activity'' to align these regulations with the ISPS Code. We have amended the definition of ''Declaration of Security'' in § 101.105 as well as §§ 104.105 and 104.255 to use the term ''vessel-to-vessel activity'' in place of ''vessel-to-vessel interface,'' for consistency.

We received 26 comments dealing with the definition of ''facility.'' One commenter asked whether a facility that is inside a port that handles cargo or containers, but does not have direct water access, is covered under the definition of facility. Another commenter recommended that the definition specify that facilities without water access and that do not receive vessels be exempt from the requirements. One commenter asked whether small facilities, located inland on a river, would be subject to part 105 if they receive vessels greater than 100 gross registered tons on international voyages. One commenter asked whether a company that receives refined products via pipeline from a dock facility that the company does not own qualifies as a regulated facility. One commenter asked whether part 105 applies to facilities at which vessels do not originate or terminate voyages. Two commenters stated that the word ''adjacent'' in the definition should be changed to read ''immediately adjacent'' to the ''navigable waters.'' One commenter suggested that, in the definition, the word ''adjacent'' be

defined in terms of a physical distance from the shore and the terms ''on, in or under'' and ''waters subject to the jurisdiction of the U.S.'' be clarified. Two commenters understand the definition of ''facility'' to possibly including overhead power cables, underwater pipe crossings, conveyors, communications conduits crossing under or over the water, or a riverbank. One commenter asked for a blanket exemption for electric and gas utilities. One commenter suggested rewriting the applicability of ''facilities'' in plain language or, alternatively, providing an accompanying guidance document to help owner and operators determine whether their facilities are subject to these regulations. One commenter asked us to clarify which facilities might ''qualify'' for future regulation and asked us to undertake a comprehensive review of security program gaps and overlaps, in coordination with DHS. One commenter stated that a facility that receives only vessels in ''lay up'' or for repairs should not be required to comply with part 105.

We recognize that the definition of ''facility'' in § 101.105 is broad, and we purposefully used this definition to be consistent with existing U.S. statutes regarding maritime security. A facility within an area that is a marine transportation related terminal or that receives vessels over 100 gross tons on international voyages is regulated under § 105.105. All other facilities in an area not directly regulated under § 105.105, such as some adjacent facilities and utility companies, are covered under parts 101 through 103. If the COTP determines that a facility with no direct water access may pose a risk to the area, the facility owner or operator may be required to implement security measures under existing COTP authority. With regard to facilities that receive only vessels in ''lay up'' or for repairs, we amended the regulations to define, using the definition of a general shipyard facility from 46 CFR 298.2, and exempt general shipyard facilities from the requirements of part 105 unless the facility is subject to 33 CFR parts 126, 127, or 154 or provides any other service beyond those services defined in § 101.105 to any vessel subject to part 104. In a similar manner, in part 105, we are also exempting facilities that receive vessels certificated to carry more than 150 passengers if those vessels do not carry passengers while at the facility nor embark or disembark passengers from the facility. We exempted facilities that receive vessels for lay-up, dismantling, or placing out of commission to be consistent with the other changes we have discussed above. The facilities listed in the amended §§ 105.105 and 105.110 will be covered by the AMS Plan, and we intend to issue further guidance on addressing these facilities in the AMS Plan. Finally, while not in ''plain language'' format, we have attempted to make these regulations as clear as possible. We have created Small Business Compliance Guides, which should help facility owners and operators determine if their facilities are subject to these regulations. These Guides are available where listed in the ''Assistance for Small Entities'' section of this final rule.

Five commenters recommended changes to the definitions of ''facility'' and ''OCS facility'' in § 101.105 in order to clarify the applicability of parts 104, 105, and 106 to Mobile Offshore Drilling Units (MODUs). Two commenters suggested adding language to the facility definition to specifically include MODUs that are not regulated under part 104, consistent with the definition of OCS facility. Another commenter stated that if we change the definition to include MODUs not regulated under part 104, then we also should add an explicit exemption for these MODUs from part 105. Three commenters suggested deleting the words ''fixed or floating'' and the words ''including MODUs not subject to part 104 of this subchapter'' in § 106.105 and adding a paragraph to read ''the requirements of this part do not apply to a vessel subject to part 104 of this subchapter.''

With regard to the definition of ''facility'' and the suggested additional language regarding MODUs, the definition clearly incorporates MODUs that are not covered under part 104 and MODUs are sufficiently covered under parts 101 through 103 and 106. Therefore, we are not amending our definition of facility nor incorporating the suggested explicit exemption from part 105 because these MODUs are excluded. We have, however, amended the applicability section of part 104 (§ 104.105) so that foreign flag, non-self propelled MODUs that meet the threshold characteristics set for OCS facilities are regulated by 33 CFR part 106, rather than 33 CFR part 104. We have done so because MODUs act and function more like OCS facilities, have limited interface activities with foreign and U.S. ports, and their personnel undergo a higher level of scrutiny to obtain visas to work on the Outer Continental Shelf. These amendments to § 104.105 required us to add a definition for ''cargo vessel'' in § 101.105. With these changes, we believe the existing definitions of ''facility'' and ''OCS facility'' in § 101.105 are sufficient to conclusively identify those entities that are subject to parts 104, 105, and 106. In addition, the definition of ''OCS facility,'' as written, ensures that these entities will be subject to relevant elements of an OCS Area Maritime Security Plan. We believe the language in § 106.105, read in concert with the amended § 104.105(a)(1), and the existing definitions in part 101, is sufficient to preclude MODUs that are in compliance with part 104 from being subject to part 106.

Two commenters stated that our definition of ''international voyage'' includes voyages made by vessels that solely navigate the Great Lakes and St. Lawrence River. The commenter contended that SOLAS specifically exempts vessels that navigate in this area from all the requirements of SOLAS.

We are aware that vessels on the Great Lakes and St. Lawrence Seaway, which are otherwise exempted from SOLAS, are required to comply with our regulations. We have amended the definition of ''international voyage'' in § 101.105 to make this clear. We do not believe that we can require lesser security measures for certain geographic areas, such as the Great Lakes and the St. Lawrence Seaway, and still maintain comparable levels of security throughout the maritime domain. In addition, while SOLAS does not typically apply to the Great Lakes and St. Lawrence Seaway, it allows contracting governments to determine appropriate applicability for their national security. For the U.S., the MTSA does not exempt geographic areas from maritime security requirements. If vessel owners or operators believe that any vessel security requirements are unnecessary due to their operating environment, they may apply for a waiver under the procedures allowed in § 104.130. Additionally, vessel owners or operators may submit for approval an Alternative Security Program to apply to vessels that operate solely on the Great Lakes and St. Lawrence Seaway.

Two commenters proposed language to clarify the definition of ''OCS facility'' to make clear that the term includes MODUs when attached to the subsoil or seabed for the exploration, development, or production of oil or natural gas. One commenter suggested that this additional language would ''provide clarification regarding the applicability of'' part 106.

The purpose of the broad definition of ''OCS facility'' in § 101.105 is to incorporate all such facilities so that the OCS facilities that are not regulated under part 106 will be regulated under

parts 101 through 103. The proposed additional language would not add clarity to part 106 because the applicability in § 106.105 states that the section applies only to those MODUs that are operating for the purposes of engaging in the exploration, development, or production of oil, natural gas, or mineral resources.

Two commenters asked the Coast Guard to change the language in § 104.400(a) to delineate the responsibilities of towing vessels and facilities when dealing with unmanned vessels.

We are amending the definition of ''owner or operator'' in § 101.105 to clarify when ''operational control'' of unmanned vessels passes between vessels and facilities. No change was made to § 104.400(a) because the change to the definition of ''owner or operator'' addresses this concern.

Two commenters suggested amending the definition of ''owner or operator'' so that the definition includes, for OCS facilities: ''the lessee or the operator designated to act on behalf of the lessee in accordance with 30 CFR part 250.'' One commenter sought clarification of the terms ''owner or operator'' and suggested adding ''operational control is the ability to influence or control the physical or commercial activities pertaining to that facility for any period of time.''

We disagree with adding the suggested language of the first commenter because we have concluded that the owner and the person with operational control are in the best position to implement these regulations and, therefore, should be responsible for implementation. The language proposed would include a lessee regardless of whether or not that lessee maintains such operational control. We also disagree with adding the suggested language of the second comment because it does not provide for security activities in addition to the physical or commercial activities.

After further review of the definition for passenger vessel, we determined that a clarification was needed with respect to vessels on international voyages. In the temporary interim rule we unintentionally included all vessels carrying more than 12 passengers because we did not specify that a vessel on an international voyage would be deemed a passenger vessel only if it carried a passenger-for-hire. We have amended the definition to clarify that when a vessel is on an international voyage carrying more than 12 passengers, a vessel is considered a passenger vessel only if one of those passengers is a passenger-for-hire. We have made a conforming amendment to § 104.105.

Three commenters requested that the Coast Guard clarify the term ''persons'' to exclude crewmembers.

We do not provide a specific definition for the term ''persons'' in these rules. It was our intent for the word ''persons'' to include crewmembers.

We received five comments regarding the use of the word ''port'' in the regulations. Four commenters requested that we amend many sections of parts 101 and 103 to remove the word ''port'' from the regulatory text, stating that parts 101 and 103 are not necessarily applicable to just ports, but to an area as a whole. One commenter recommended that we include definitions for ''Seaport,'' ''Port Authority,'' ''Port Director,'' and ''Seaport Security Assessment/Plan,'' stating that a seaport can act as its own legal entity and enforce its own laws and regulations.

As described in the temporary interim rule in part 101, Table 4 (68 FR 39266–39267), ''area maritime,'' ''port,'' and ''port facility'' are comparable, and we do not believe the recommended editorial changes add significant value or clarity. In addition, adding definitions incorporating ''seaport,'' as suggested, is less inclusive than what is addressed in the MTSA. Furthermore, this concept does not align with the ISPS Code. We are not, therefore, amending parts 101 or 103.

Six commenters stated that part 105 should not apply to marinas that receive a small number of passenger vessels certificated to carry more than 150 passengers or to ''mixed-use or special-use facilities which might accept or provide dock space to a single vessel'' because the impact on local business in the facility could be substantial. Two commenters stated that private and public riverbanks should not be required to comply with part 105 because ''there is no one to complete a Declaration of Security with, and no way to secure the area, before the vessel arrives.'' Two commenters stated that facilities that are ''100 percent public access'' should not be required to comply with part 105 because these types of facilities are ''vitally important to the local economy, as well as to the host municipalities.'' This commenter also stated that vessels certificated to carry more than 150 passengers frequently embark guests at private, residential docks and small private marinas for special events such as weddings and anniversaries and may visit such a dock only once.

We agree that the applicability of part 105 to facilities that have minimal infrastructure, but are capable of receiving passenger vessels, is unclear. Therefore, we added a definition in part 101 for a ''public access facility'' to mean a facility approved by the cognizant COTP with public access that is primarily used for purposes such as recreation or entertainment and not for receiving vessels subject to part 104. By definition, a public access facility has minimal infrastructure for servicing vessels subject to part 104 but may receive ferries and passenger vessels other than cruise ships, ferries certificated to carry vehicles, or passenger vessels subject to SOLAS. Minimal infrastructure would include, for example, bollards, docks, and ticket booths, but would not include, for example, permanent structures that contain passenger waiting areas or concessions. We have not allowed public access facilities to be designated if they receive vessels such as cargo vessels because such cargo-handling operations require additional security measures that public access facilities would not have. We amended part 105 to exclude these public access facilities, subject to COTP approval, from the requirements of part 105. We believe this construct does not reduce security because the facility owner or operator or entity with operational control over these types of public access facilities still has obligations for security that will be detailed in the AMS Plan, based on the AMS Assessment. Additionally, Vessel Security Plans must address security measures for using the public access facility. This exemption does not affect existing COTP authority to require the implementation of additional security measures to deal with specific security concerns. We have also amended § 103.505, to add public access facilities to the list of elements that must be addressed within the AMS Plan.

One commenter noted that in the definition of ''transportation security incident,'' there should be a clear definition of the specific event or events the Coast Guard is trying to avoid or prevent, stating that for some of these events, industry already has good mitigation strategies in place that might avoid the need to add additional security measures.

The event that the Coast Guard is trying to avoid or prevent is a transportation security incident, which is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. As indicated in the

temporary interim rule (68 FR 39272) (part 101), we acknowledged that ''many companies already have spent a substantial amount of money and resources to improve and upgrade security.'' These improvements will be taken into account in their Vessel or Facility Security Assessments and subsequent security plan development.

One commenter suggested that the definition of ''unaccompanied baggage'' be revised to include baggage for which there is no accompanying passenger or crewmember. The commenter also noted that, if read literally, the definition in § 101.105 would include all passenger baggage already ''checked,'' and therefore separated from its owner. The suggested definition was the following: ''baggage that was to be carried on board the ship when no passenger or crewmember was traveling on the same voyage or portion of that voyage.''

We agree that ''unaccompanied baggage'' should include baggage for which there is not an accompanying passenger or crewmember. With regard to ''checked'' baggage, our definition aligns with the ISPS Code, part B. ''Checked'' baggage at the point of inspection or screening should be with a crewmember or other person and therefore remains accompanied. After inspection or screening, the baggage will be controlled until it is loaded on the vessel. We have amended the definition of ''unaccompanied baggage'' to reflect the above and clarified the reference to an ''other person.''

One commenter asked us not to change the definition of ''vessel stores'' as published in the temporary interim rule.

The definition of ''vessel stores'' remains the same as published in the temporary interim rule (68 FR 39281) (part 101).

We received 11 comments relating to the use of the terms ''vessel-to-facility interface,'' ''vessel-to-port interface,'' and ''vessel-to-vessel activity.'' Seven commenters requested that the Coast Guard be consistent in its use of ''vessel-to-vessel interface'' in § 101.105 and use the word ''cargo'' instead of the phrase ''goods or provisions.'' One commenter asked us to modify the definition of a ''vessel-to-vessel activity'' to include the transfer of a container to or from a manned or unmanned vessel. One commenter noted that it should be made clear that the term ''vessel-to-facility interface'' refers to when the vessel is at the facility or arriving at the facility.

We agree with the commenters. We have amended the definitions for ''vessel-to-facility interface,'' ''vessel-to-port interface,'' and ''vessel-to-vessel activity'' in § 101.105 to use the words ''cargo'' and ''vessel stores'' instead of the word ''goods'' to be clearer for the intended activities. The term ''vessel-to-facility interface'' clearly states that the vessel is either at, or arriving at, the facility, and therefore, we did not amend the definition further.

Five commenters requested that we amend the definition of ''waters subject to the jurisdiction of the United States'' to simply refer to the definition of that term in 33 CFR 2.38, stating that doing so would be less confusing. Four commenters asked us to clarify the term ''superadjacent'' used in the same definition.

The definition suggested by the commenter would exclude application of these regulations to the Exclusive Economic Zone (EEZ) and waters superjacent to the OCS. We believe that including the EEZ and the waters superjacent to the OCS is crucial to implementing the comprehensive security regime intended by the MTSA. It is also consistent with the Coast Guard's anti-terrorism authorities in 33 U.S.C. 1226. However, we agree the definition is somewhat confusing and needs clarification. In the temporary interim rules, we defined ''waters subject to the jurisdiction of the United States'' to include, in addition to the EEZ and the waters superjacent to the Outer Continental Shelf, the ''navigable waters'' as defined in 46 U.S.C. 2101(17a). Navigable waters in this context, by reference to Presidential Proclamation No. 5928, extend to the full breadth of the territorial sea that is 12 nautical miles wide, adjacent to the coast of the United States, and seaward of the territorial sea baseline. We believe the better approach is to amend our recent recodification of jurisdictional terms in 33 CFR part 2 to reflect that, consistent with the temporary interim rules, the 12 nautical mile territorial sea applies not only to statutes under subtitle II of title 46 but also statutes under subtitle VI of title 46 (section 102 of the MTSA). Doing so simplifies the definition of ''waters subject to the jurisdiction of the United States'' for purposes of the regulations by permitting reference, in part, to an existing regulatory definition. The amended definition of ''waters subject to the jurisdiction of the United States'' reflects this change.

Five commenters disagree with applying the same regulations to all segments of the maritime industry, stating that it is not practical. One of these commenters suggested that the regulations exempt entities, such as nuclear facilities covered under 10 CFR part 73 and 49 CFR part 172, because they are already regulated.

We developed these regulations to be tailored to diverse industries within the maritime community through various provisions, such as the Alternative Security Program. If a nuclear facility is involved in the activities regulated under part 105, then the facility must comply with that part. However, we have made multiple provisions within the regulations so entities that are already covered by other requirements for security should be able to coordinate their compliance with these rules and others they already have implemented.

Two commenters were concerned about the breadth of the regulations. One commenter asked that the regulations be broadened to allow for exemptions. One commenter stated that the applicability as described in § 101.110 is ''much too general,'' stating that it can be interpreted as including a canoe tied up next to a floating dock in front of a private home. The commenter concluded that such a broad definition would generate ''a large amount of confusion and discontent'' among recreational boaters and waterfront homeowners.

Our applicability for the security regulations in 33 CFR chapter I, subchapter H, is for all vessels and facilities; however, parts 104, 105, and 106 directly regulate those vessels and facilities we have determined may be involved in transportation security incidents, which does not include canoes and private residences. For example, § 104.105(a) applies to commercial vessels; therefore, a recreational boater is not regulated under part 104. If a waterfront homeowner does not meet any of the specifications in § 105.105(a), the waterfront homeowner is not regulated under part 105. It should be noted that all waterfront areas and boaters are covered by parts 101 through 103 and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various MARSEC Levels that may apply to them. Security zones and other measures to control vessel movement are some examples of AMS Plan actions that may affect a homeowner or a recreational boater. Additionally, the COTP may impose measures, when necessary, to prevent injury or damage or to address specific security concerns.

Five commenters addressed the applicability of the regulations with respect to facilities and the boundaries of the Coast Guard jurisdiction relative to that of other Federal agencies. Four commenters advocated a ''firm line of

demarcation'' limiting the Coast Guard authority to the ''dock,'' because as the rule is now written, a facility may still be left to wonder which Federal agency or department might have jurisdiction over it when it comes to facility security. One commenter suggested that the Coast Guard jurisdiction should not extend beyond ''the first continuous access control boundary shore side of the designated waterfront facility.''

Section 102 of the MTSA requires the Secretary of the Department in which the Coast Guard is operating to prescribe certain security requirements for facilities. The Secretary has delegated that authority to the Coast Guard. Therefore, the Coast Guard is not only authorized, but also required under the MTSA, to regulate beyond the ''dock.''

Two commenters requested clarification on our reference to SOLAS and facility applicability. One commenter stated that because the applicability of the various chapters of SOLAS is not consistent, it is necessary to specify particular chapters in SOLAS to define the applicability of this regulation to U.S. flag vessels. The commenter requested that we limit the reference to SOLAS in § 105.105(a)(3) to ''SOLAS Chapter XI–2.'' Another commenter stated that it is not clear whether the words ''greater than 100 gross registered tons'' applied to SOLAS vessels as well as to vessels that are subject to 33 CFR Chapter I, subchapter I.

We agree that the general reference to SOLAS is broad and could encompass more vessels than necessary. We have amended the applicability reference to read ''SOLAS Chapter XI'' because subchapter H addresses those requirements in SOLAS Chapter XI. Also, we have amended § 105.105(a) to apply the term ''greater than 100 gross registered tons'' to facilities that receive vessels subject only to subchapter I. We did not include references to foreign or U.S. ownership in the applicability paragraphs because it is duplicative to the existing language.

Thirty commenters commended the Coast Guard for providing an option for an Alternative Security Program as described in § 101.120(b) and urged the Coast Guard to approve these programs as soon as possible.

We believe the provisions in § 101.120(b) will provide greater flexibility and will help owners and operators meet the requirements of these final rules. We will review Alternative Security Program submissions in a timely manner to determine if they comply with the security regulations for their particular industry segment. The Coast Guard has already received and begun reviewing Alternative Security Programs, and we have been able to approve three such programs. We have amended § 101.125 to list those approved Alternative Security Programs. We will announce new approvals of Alternative Security Programs through the **Federal Register**, and intend to update § 101.125 on an annual basis.

Twenty commenters requested clarification on the Alternative Security Program. Three commenters requested that the Coast Guard work with their industry association to come up with their own security program. Two commenters asked for guidance on how to implement an Alternative Security Program. One commenter stated that the Coast Guard should recognize its existing security programs. One commenter suggested that we allow owners or operators to use industry security standards, recommended practices, and guidelines as Alternative Security Programs. Four commenters requested that Alternative Security Programs be available to certain owners and operators of foreign flag vessels that are not subject to SOLAS. Three commenters asked for clarification as to which facilities are eligible to participate in an Alternative Security Program. One commenter recommended that the Alternative Security Program be available to vessels subject to SOLAS.

We encourage industries to develop Alternative Security Programs that address those aspects of security unique to their industry. Section 101.120 allows industry associations to submit Alternative Security Programs to the Coast Guard for approval. As part of the review process, we will work with industry representatives to assure that Alternative Security Programs meet the requirements of the rules and ensure maritime security. We agree that the Alternative Security Program should be available to certain owners and operators of foreign flag vessels that are not subject to SOLAS and to facilities that serve vessels on international voyages. Because the AMS Plan will be the approved port facility security plan as described in the ISPS Code, part A, we have amended § 101.120 to allow certain facilities that serve vessels subject to SOLAS Chapter XI the option of using an Alternative Security Program that has been reviewed and approved by the Coast Guard. We do not intend to allow vessels subject to SOLAS to use an Alternative Security Program. Two commenters stated that § 101.120 does not allow an industry association to submit an Alternative Security Program for approval. One commenter asked that the regulations for Alternative Security Programs be clarified to allow participants to carry a copy of the Coast Guard approved Alterative Security Program on board vessels or at facilities.

Section 101.120(c) does not preclude an industry association from submitting an Alternative Security Program for approval. In addition, the regulations requiring the availability of the security plans on board the vessels or at the facility do not preclude the owner or operator of the vessel or facility from keeping a Coast Guard approved Alternative Security Program on board the vessel or at the facility. Furthermore, we have amended § 101.120(b)(3) and added a new provision, § 101.120(b)(4), to clarify that owners or operators implementing an Alternative Security Program must provide information to the Coast Guard when requested. This clarification was needed, among other things, to ensure that the Coast Guard has access to relevant information to assist our compliance and verification responsibilities. The information may also be needed to help the Coast Guard assess vulnerabilities, conduct an AMS Assessment, or develop an AMS or National Security Plan. Finally, after further review of parts 101 and 104 through 106, we have amended §§ 101.120(b)(3), 104.120(a)(3), 105.120(c), and 106.115(c) to clarify that a vessel or facility that is participating in the Alternative Security Program must complete a vessel or facility specific security assessment report in accordance with the Alternative Security Plan, and it must be readily available.

Three commenters stated that the cognizant COTP should be responsible for reviewing the submissions for the Alternative Security Program when the company operates exclusively in one COTP zone. The commenters noted that COTPs have the best knowledge of the vessels and facilities operating in their zone.

We require that requests to implement an Alternative Security Program be submitted for approval to the Commandant (G–MP) because we want to ensure uniformity across all COTP zones in the implementation of this program. The Commandant (G–MP) will coordinate and consult with local COTPs, Districts, and Areas, as needed, on these submissions.

After further review of § 101.120, we are amending the section to provide a procedure for amending an Alternative Security Program, and to align the effective period of an Alternative Security Program with the 5-year period provided for other security plans. Additionally, after review of the

''Submission and approval'' requirements in §§ 101.120, 104.410, 105.410, and 106.410, we have amended the requirements to clarify that security plan submissions can be returned for revision during the approval process.

We received seven comments regarding waivers, equivalencies, and alternatives. Three commenters appreciated the flexibility of the Coast Guard in extending the opportunity to apply for a waiver or propose an equivalent security measure to satisfy a specific requirement. Four commenters requested detailed information regarding the factors the Coast Guard will focus on when evaluating applications for waivers, equivalencies, and alternatives.

The Coast Guard believes that equivalencies and waivers provide flexibility for vessel owners and operators with unique operations. Sections 104.130, 105.130, and 106.125 state that vessel or facility owners or operators requesting waivers for any requirement of part 104, 105, or 106 must include justification for why the specific requirement is unnecessary for that particular owner's or operator's vessel or facility or its operating conditions. Section 101.120 addresses Alternative Security Programs and § 101.130 provides for equivalents to security measures. We intend to issue guidance that will provide more detailed information about the application procedures and requirements for waivers, equivalencies, and the Alternative Security Program.

One commenter requested that we allow a group of facilities that combine to act as an identified unit to be considered as an equivalency or add a definition of either ''port'' or ''port authority.'' The commenter also stated that part 105 should allow port security plans, developed by local government port authorities and approved by State authorities, to serve as equivalent security measures.

We do not agree with adding a definition of ''port'' to recognize a group of facilities that combine to act as an identified unit. However, groups of facilities may work together to enhance their collective security and achieve the performance standards in the regulations. Locally developed port security plans may serve as an excellent starting point for those facilities located within the jurisdiction of a port authority. We believe that the provisions of §§ 105.300(b), 105.310(b), and 105.400(a) permit the COTP to approve a Facility Security Plan that covers multiple facilities, such as a co-located group of facilities that share security arrangements, provided that the particular aspects and operations of each subordinate facility are addressed in the common assessment and security plan. A single Facility Security Officer for the port or cooperative should be designated to facilitate this common arrangement. Finally, local security programs developed by entities such as a port authority or a port cooperative may be submitted to the Coast Guard for consideration as Alternative Security Programs in accordance with § 101.120(c).

Six commenters asked that terms and definitions in the regulations match those in the ISPS Code, and not the terms and definitions in the MTSA, to minimize confusion among international companies. Two commenters stated that inclusion of the ISPS Code terms ''port facility security plan'' and ''port facility security officer'' in the definitions of AMS Plan and Federal Maritime Security Coordinator, respectively, in these regulations will cause confusion and is contrary to the intent of the ISPS Code.

We recognize that it can be confusing for foreign flag vessels to operate under different definitions than those present in the ISPS Code. The ISPS Code, however, gives contracting governments latitude in implementing its provisions. At the same time, the MTSA imposes its own requirements. Our regulations align the requirements of both the ISPS Code and the MTSA, and the definitions used within the regulations reflect this alignment.

We received several comments that were beyond the scope of this final rule. One commenter supported making foreign flag vessel owners, operators, and vessel managers financially accountable for the direct and indirect economic impacts resulting from a terrorist activity stemming from one of their company's managed commercial vessels. One commenter asked that their product be included as part of these final rules.

Imposing these suggested financial obligations is beyond the scope of this final rule. There are, however, new provisions such as the continuous synopsis record (SOLAS Chapter XI–1, regulation 5) that effectively address ownership and identify those that may be responsible for the operation of the vessel. Product solicitations are also beyond the scope of this final rule and are not addressed.

Three commenters questioned the foreign port assessment program. One commenter stated the U.S. assessment of foreign ports could create ''too many layers'' of inspection, stating that the European Commission will assess the security of their own ports, and the U.S. assessment process is, therefore, duplicative. Two commenters recommended that the U.S. accept assessments of foreign ports by reputable maritime administrations in accordance with IMO requirements. One commenter expressed concerns regarding the Coast Guard's intention to conduct foreign port audits, and expressed hope that the U.S. would accept the International Labor Organization's (ILO) work on seafarer credentialing.

The Coast Guard, in cooperation with TSA, BCBP, and MARAD, is still developing the foreign port assessment program to implement 46 U.S.C. 70108. We intend to work cooperatively with officials in foreign ports and other organizations, such as the European Commission and ILO, to reduce unnecessary duplication in assessing the effectiveness of antiterrorism measures maintained at foreign ports and the credentialing of seafarers.

Subpart B—Maritime Security (MARSEC) Levels

This subpart concerns the setting of MARSEC Levels.

We received 15 comments regarding MARSEC Level alignment. One commenter agreed with the alignment. One commenter stated that §§ 101.200 and 101.205 are inconsistent with one another. Six commenters stated that problems are likely to arise because MARSEC Levels do not match other Federal threat levels, such as the Homeland Security Advisory System (HSAS).

We disagree with the dissenting commenters. Section 101.200(d) states that COTPs may temporarily raise the MARSEC Level for their specific areas of responsibility when necessary to address an exigent circumstance immediately affecting the security of the maritime elements of their areas of responsibility. This is a narrow set of circumstances; we expect national MARSEC Levels to be established at the level of the Commandant, as stated in § 101.205. Additionally, as stated in § 101.205, MARSEC Levels have been aligned with DHS's HSAS.

In reviewing Table 101.205, we noted that the reference to the Blue HSAS threat condition should be ''guarded'' and reference to the Yellow HSAS threat condition should be ''elevated.'' We have amended Table 101.205 to reflect this clarification.

Subpart C—Communication (Port-Facility-Vessel)

This subpart concerns the communication of MARSEC Levels, threats, confirmations of attainment,

suspicious activities, breaches of security, and transportation security incidents.

We received 28 comments regarding communication of changes in the MARSEC Levels. Most commenters were concerned about the Coast Guard's capability to communicate timely changes in MARSEC Levels to facilities and vessels. Some stressed the importance of MARSEC Level information reaching each port area in the COTP's zone and the entire maritime industry. Some stated that local Broadcast Notice to Mariners and MARSEC Directives are flawed methods of communication and stated that the only acceptable means to communicate changes in MARSEC Levels, from a timing standpoint, are via email, phone, or fax as established by each COTP.

MARSEC Level changes are generally issued at the Commandant level and each Marine Safety Office (MSO) will be able to disseminate them to vessel and facility owners or operators, or their designees, by various means. Communication of MARSEC Levels will be done in the most expeditious means available, given the characteristics of the port and its operations. These means will be outlined in the AMS Plan and exercised to ensure vessel and facility owners and operators, or their designees, are able to quickly communicate with us and vice-versa. Because MARSEC Directives will not be as expeditiously communicated as other COTP Orders and are not meant to communicate changes in MARSEC Levels, we have amended § 101.300 to remove the reference to MARSEC Directives. We have added a reference to electronic means.

One commenter suggested that major commodity groups, including the chemical, hazardous material, utility, rail, truck, and air transportation industries receive information regarding potential threats from the local COTP.

As stated in § 101.300(b), the COTP will, when appropriate, communicate to port stakeholders certain information regarding known threats that may cause a transportation security incident.

We received 15 comments on the facility owner's or operator's responsibility to communicate changes in MARSEC Levels to vessels bound for the facility. Nine commenters noted that it would be difficult and impractical for facilities to notify vessels 96 hours prior to arrival of changes in MARSEC Levels, because some vessels and facilities do not have a means to provide secure communications. Three commenters stated that facilities should not be responsible for notifying vessels that have not arrived at the facility of MARSEC Level changes. In contrast, one commenter suggested that the Coast Guard amend § 101.300(a) to include a provision for facilities to notify vessels of MARSEC Level changes within 96 hours, much like that which is currently found in § 105.230(b)(1).

The intent of the regulations is to give vessel owners or operators the maximum amount of time possible to ensure the higher MARSEC Level is implemented on the vessel prior to interfacing with a facility. This ensures that the facility's security at the higher MARSEC Level is not compromised when the vessel arrives. Therefore, while it may be difficult to contact a vessel in advance of its arrival, it is imperative for the security of the facility and the vessel. Additionally, communications between the facility and the vessel do not need to be secure, as MARSEC Levels are not classified information. We have not amended § 101.300(a) because this section is intended to regulate communication at the port level, whereas § 105.230(b)(1) is intended to regulate communication at the individual facilities within the port.

One commenter asked whether the COTP's communication of required actions to minimize risk, under § 101.300(b)(5), refers only to measures that have been detailed in the Vessel Security Plan or the Facility Security Plan.

At any MARSEC Level, the COTP, consistent with the authority in 33 U.S.C. chapter 1221 and 50 U.S.C. chapter 191, may require owners and operators to take measures to counter security threats that are beyond those detailed in their security plans when necessary to prevent injury or damage or to secure the rights and obligations of the U.S. This is consistent with requirements specified in the ISPS Code.

We received 19 comments on the requirements that owners and operators of vessels and facilities confirm attainment of increased MARSEC Level security measures. Some requested that the Master, not the owner or operator, be responsible for reporting to the local COTP the attainment of the change in MARSEC Level. Several commenters sought clarification as to which COTP they need to report their attainment of security measures. Others questioned the ability of the COTP to receive potentially hundreds of calls confirming attainment of security measures in their security plan or requirements imposed by the COTP. Finally, some questioned the benefit of reporting compliance with the MARSEC Level change.

We agree with the comment to allow owners and operators to designate the Master or another appropriate person to be responsible for reporting the attainment of the MARSEC Level and are amending § 101.300 to allow this. Our intent is to have one company representative contact the local COTP to minimize the number of calls to the local COTP during a change in MARSEC Level. Consistent with the ISPS Code, part A, attainment measures should be reported to the COTP that issued the notice of the change in MARSEC Levels to that vessel, so as to ensure compliance.

Two commenters suggested that the Coast Guard should be responsible for facilitating communications between vessels and facilities.

We believe that it is the Coast Guard's role to ensure that vessels and facilities have the proper procedures and equipment for communicating with each other. The Coast Guard does have communication responsibilities, as found in § 101.300. It is imperative, however, that vessels and facilities effectively communicate with each other to effectively coordinate the implementation of security measures. Thus, we have placed this requirement on the owner or operator, not the Coast Guard. The Coast Guard will be inspecting facilities and vessels to ensure this communication is accomplished.

Twelve commenters requested that the Coast Guard issue specific communications guidelines to affected facilities and vessels bound for and operating in U.S. ports. One commenter stated that, in guidance, we should define a means by which changes in MARSEC Levels will be communicated to U.S. flag vessels that are not in the coastal waters.

We recognize that further guidance should be provided to ensure communication expectations are clearly outlined. We intend to update the guidance in NVIC 9–02 (Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports) to address communications with facilities and vessels bound for and operating in U.S. ports. We will also address communication of MARSEC Levels with U.S. flag vessels operating internationally in this guidance and intend to coordinate these types of communications with MARAD.

Two commenters suggested web-based information sharing methods. One commenter recommended a proprietary, secure, web-based information portal for vessels, port facilities, and other transportation/supply chain participants to report and record required security information, security documents, and security checks in complying with Coast

Guard and IMO requirements. One commenter suggested that the Coast Guard include information to coordinate and provide access to regulatory compliance tools on a website. The commenter also suggested that the preamble accompanying the final rules should have well-named headings to assist the regulated community in locating information, including language explaining the applicability of SOLAS and including a list of contracting governments.

We intend to be flexible in the implementation of communication reporting methods to be used by vessel and facility owners or operators, and we are working on a website to provide security information to the regulated community. We encourage owners or operators to implement a system that best allows them to meet the reporting and recordkeeping requirements of their approved security plan. Additionally, the Coast Guard has provided headings throughout this preamble, based on the subparts of these security rules, to assist the public in locating information. SOLAS applicability is clearly defined in SOLAS and IMO maintains a list of contracting governments, which can be found on IMO's website (*http://www.imo.org*).

Twenty commenters made suggestions regarding reporting to the National Response Center (NRC) under § 101.305. Five commenters did not support notification to the NRC for all breaches of security. Two commenters stated that because the scope of the term ''transportation security incident'' and the meaning of the terms ''may result'' and ''breach of security'' are not clear, the regulated community is at risk of both over-reporting and under-reporting suspicious activity. Three commenters also suggested that the Coast Guard make a distinction between suspicious activities and an actual transportation security incident. Four commenters stated that it is not clear what the NRC would do with the information about suspicious incidents or how such a notification would sufficiently improve facility security in concert with other reporting processes for suspicious activity or security incidents. Eight commenters suggested that notifying the NRC ''without delay'' will not provide for the quickest response and suggested that owners or operators be allowed to: (1) Activate the security plan; (2) notify local law enforcement; (3) notify the local COTP; (4) use VHF channel 16 to notify the local area; or (5) notify the NRC ''as soon as practical.''

The Coast Guard provided a distinction between suspicious activities and a transportation security incident in part 101. A ''transportation security incident'' is defined in § 101.105, as ''a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.'' As stated in § 101.305(a), a ''suspicious activity'' is an activity that may result in a transportation security incident. The purpose of requiring vessel and facility owners or operators to report suspicious activities or breaches of security ''without delay'' to the NRC is to enable the Coast Guard to identify patterns of this type of activity on a national scale and consult with other Federal agencies to confirm if the activity is a coordinated threat to our nation. The NRC will also relay to the COTP, and as appropriate port stakeholders, vessels, and facilities, reports of suspicious activities, breaches of security, and information concerning security-related patterns and trends. Because it is imperative to identify nationwide threat patterns, we did not amend the reporting requirements for suspicious activities or breaches of security. In the case of a transportation security incident, the notification goes, without delay, to the COTP or cognizant District Commander for OCS facilities, because of the need to assess impacts to the port area and to implement the AMS Plan, as appropriate.

Subpart D—Control Measures for Security

This subpart concerns control and compliance measures, including enforcement, MARSEC Directives, and penalties.

Seventeen commenters urged the Coast Guard to fully recognize the need for consistency in the application and enforcement of security-related regulations and in the plan approval process across several COTP zones.

We do recognize the need for consistency in the application and enforcement of the regulations. Therefore, the Coast Guard will continue to develop guidance for COTPs to consistently implement and enforce the security regulations.

Two commenters stated that the ''entire issue of the authority to issue a MARSEC Directive'' needed clarification. In addition, the commenters noted that in § 101.405(a)(1), the Commandant may delegate the authority to issue MARSEC Directives and indicated that this authority should remain with the Commandant.

MARSEC Directives are necessary as a mechanism to provide specific instruction to achieve the performance standards required by these regulations and 46 U.S.C. Chapter 701 but that should not be open to the general public. As such, the MARSEC Directives will be labeled as sensitive security information because they will contain information that, if disclosed, could be used to exploit security systems and measures. MARSEC Directives will be issued under an extension of the Coast Guard's existing COTP authorities regarding maritime security, found in 33 U.S.C. 1226 and 50 U.S.C. 191. In part, the implementing regulations for 50 U.S.C. 191, found at 33 CFR 6.14–1 and promulgated by Executive Order 10277, contemplate action by the Commandant that is national in scope. Specifically, these regulations authorize the Commandant to prescribe such conditions and restrictions deemed necessary under existing circumstances for the security of certain facilities or public and commercial structures and vessels. Additionally, 43 U.S.C. 1333(d) authorizes the Coast Guard to establish certain requirements for OCS facilities. Moreover, MARSEC Directives are a necessary and integral part of carrying out the Coast Guard's authorities in 46 U.S.C. Chapter 701. The Commandant, at this time, intends to retain the authority to issue all MARSEC Directives.

Forty-three commenters requested clarification on issuance and receipt of MARSEC Directives. Several suggested that the Coast Guard: allow companies to submit a national ''security sensitive information form,'' rather than notifying each COTP that companies have a ''need to know'' the security sensitive information contained in MARSEC Directives; have MSOs make Directives from all other MSOs available, which will allow them to have ''1-stop shop'' service; and, develop a secure website where individuals with sensitive security information authorization could access directives from all COTP zones. Many stated that owners and operators should not be required to comply with MARSEC Directives if they cannot or are not allowed to access the information in the Directive when that information is sensitive security information. Some were concerned that owners and operators would not know if they had a ''need to know'' the information in a MARSEC Directive under § 101.405(a)(2). Several comments asked for clarification of who will be granted access to applicable MARSEC Directives. One commenter requested a standardized process for applying for ''need to know'' status. One commenter argued that proof of a ''need to know'' undermines the purpose of

communicating MARSEC Directives. One commenter said there should be one U.S. agency responsible for disseminating non-classified security information to shippers who do not have security clearances. Some commenters asked if vessel agents would be able to obtain copies of a MARSEC Directive on behalf of the vessel owner or operator. Most stated that the current process for communicating MARSEC Directives is cumbersome and suggested the best practice to inform foreign vessels entering waters under the jurisdiction of the U.S. would be to notify each at the time they file their 96-hour Notice of Arrival.

We recognize that the MARSEC Directive provision in § 101.405 establishes a challenging process for distributing directives to the regulated community. To ensure nationwide consistency, MARSEC Directives are issued at the Commandant level and, therefore, will allow each MSO to serve as a ''1-stop shop'' for MARSEC Directives. When owners, operators, or appointed agents of an owner or operator are notified of a MARSEC Directive, information will be included indicating those that have a ''need to know.'' To verify that an owner or operator has the ''need to know'' the content of a MARSEC Directive, MSOs have several tools available to them, including a database of vessels and facilities and their owner and operator information. In addition, an MSO can determine if a Company Security Officer, Vessel Security Officer, or Facility Security Officer has a ''need to know'' if an approved Vessel Security Plan or Facility Security Plan is presented to them. Once a person has provided enough information for the MSO to verify that person's ''need to know'' and status as a regulated entity, the MSO will provide the MARSEC Directive. The ''need to know'' designation is required to protect sensitive security information from being exploited. We also recognize that further guidance should be provided to ensure communication expectations are clearly outlined and intend to update the guidance in NVIC 9–02 (Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports) to address distribution of MARSEC Directives.

One commenter asserted that there needs to be a means for industry and stakeholders to provide input or feedback both before and after the MARSEC Directive becomes effective, considering their knowledge of what will or will not work in an effective shipboard security program.

The regulations, in § 101.405, currently limit the authority to issue MARSEC Directives to the Commandant or his/her designee; however, we intend to consult other Federal agencies having an interest in the subject matter prior to issuing MARSEC Directives. When appropriate and as time permits, we intend to further consult with the affected industry. Section 101.405(d) also provides for an owner or operator to propose equivalent security measures in the event that they are unable to comply with MARSEC Directives.

Two commenters anticipated that MARSEC Directives would be prescriptive and that the Coast Guard should grant alternatives and equivalencies under these Directives. One commenter asked whether a recipient of a MARSEC Directive can maintain equivalent security measures for the duration of the directive, which could be open-ended, or if the recipient would have a certain amount of time to specifically comply with the MARSEC Directive.

We agree that there should be opportunities for owners and operators to implement alternatives or equivalent security measures to those prescribed in a MARSEC Directive. We provided these opportunities in § 101.405, which governs § 104.145 (MARSEC Directives), to allow equivalent security measures to be submitted to the Coast Guard in lieu of the specific measures required in a MARSEC Directive. Equivalencies approved by the Coast Guard under a specific MARSEC Directive will be in effect for the duration of that Directive.

Two commenters stated that our regulations suggest that information designated as sensitive security information is exempt from the Freedom of Information Act (FOIA). One commenter suggested that all documentation submitted under this rule be done pursuant to the Homeland Security Act of 2002, to afford a more legally definite protection against disclosure.

''Sensitive security information'' is a designation mandated by regulations promulgated by TSA and may be found in 49 CFR part 1520. These regulations state that information designated as sensitive security information may not be shared with the general public. FOIA exempts from its mandatory release provisions those items that other laws forbid from public release. Thus, security assessments, security assessment reports, and security plans, which should be designated as sensitive security information, are all exempt from release under FOIA.

Three commenters stated that § 101.405(a)(2) refers to a ''covered person'' as a term defined in 49 CFR 1520 related to sensitive security information. However, upon review of those regulations, they did not find a definition of ''covered person'' in those regulations.

We agree that the terminology in § 101.405(a)(2) is confusing. Therefore, we are clarifying § 101.405(a)(2) by amending the phrase ''require owners or operators to prove that they have a 'need to know' the information in the MARSEC Directive and that they are a 'covered person' '' to read ''require the owner or operator to prove that they are a person required by 49 CFR 1520.5(a) to restrict disclosure of and access to sensitive security information, and that under 49 CFR 1520.5(b), they have a need to know sensitive security information.''

One commenter suggested that we amend § 101.405 and change the words ''may'' and ''should'' to read ''will'' and ''shall.''

We do not believe the recommended editorial changes add significant value or clarity.

We received three comments on Recognized Security Organizations (RSO). One commenter believed that any question of ''underperformance'' on the part of an RSO should be taken up with the flag state that has made the designation and should not, in the first instance, be sufficient justification for the application of control measures on a vessel that has been certified by the RSO in question. Another commenter recommended that the Coast Guard maximize national consistency and transparency with regard to the factors that are evaluated in the targeting matrix. One commenter supported the Coast Guard's plan to use Port State Control to ensure that Vessel Security Assessments, Plans, and International Ship Security Certificates (ISSCs) approved by designated RSOs comply with the requirements of SOLAS and the ISPS Code.

In conducting Port State Control, the Coast Guard will consider the ''underperformance'' of an RSO. However, a vessel's or foreign port facility's history of compliance will also be important factors in determining what actions are deemed appropriate by the Coast Guard to ensure that maritime security is preserved.

Two commenters stated that in its control and compliance measures, the Coast Guard should clarify its legal authority to establish a security zone beyond its territorial sea.

One basis for the Coast Guard to establish security zones in the EEZ is pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.* For

example, consistent with customary international law, 33 U.S.C. 1226 provides the Coast Guard with authority to carry out or require measures, including the establishment of safety and security zones, to prevent or respond to an act of terrorism against a vessel or public or commercial structure that is located within the marine environment. 33 U.S.C. 1222 defines ''marine environment'' broadly to include the waters and fishery resources of any area over which the U.S. asserts exclusive fishery management authority. The U.S. asserts exclusive fishery management authority in the EEZ.

Ten commenters were concerned that the control and compliance measures section did not address the liability implications of implementing the provisions required by these regulations and complying with the directives associated with the MARSEC Levels established by the Coast Guard. Two commenters were concerned with the liability for oil spills resulting from a transportation security incident. Two commenters recommended that the strict liability scheme under OPA 90 not be used for such circumstances. Two commenters believed there is a need to address liability for undue delay during application of control measures. One commenter believed there is a need to address Coast Guard liability in the context of owners or operators acting as government agents when conducting screenings. One commenter questioned whether the ship agent, whose bond is often used for Customs clearance for a vessel, would be liable if a vessel violates control and compliance issues.

An approved security plan under these security regulations satisfies the requirements of 46 U.S.C 70103(c)(3)(D). The fact that a transportation security incident is not deterred does not alone constitute a failure to comply with these security regulations. Failure to follow the approved plan, however, is a violation of these regulations. While we appreciate the points raised concerning potential liability for terrorist acts and when owners or operators are conducting screenings, the issue of liability is beyond the scope of this final rule. No provision of the MTSA addressed liability, either to expressly limit liability or to address immunity from liability. Additionally, the MTSA did not address liability within the context of undue delay. Among other things, determinations of liability require a fact-laden inquiry on a case-by-case basis and typically require complex analyses regarding matters such as choice of law, contracts, and international conventions. Undue delay is a term used in international conventions and likewise requires fact-laden analysis that we leave for the courts. We note that OPA 90 provides three defenses to its liability regime (act of God, act of war, or act or omission of a third party, as set forth 33 U.S.C. 2703). Whether one of these defenses will apply to a transportation security incident will depend on the facts of each case. Concerning the comment regarding compensation for undue delay of vessels, we note that this is a principle commonly found in IMO instruments, including other parts of SOLAS and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). Therefore, we anticipate that claims for undue delay under SOLAS Chapter XI–2, regulation 9, will be resolved similar to the resolution found in these other instruments.

One commenter said that penalties should be applied equally to both U.S. flag vessels and foreign flag vessels.

We believe that the commenter misunderstood the nature of authorities granted to port and flag states. The assertion that penalties are applied unequally to U.S. and foreign flag vessels is incorrect. Civil penalties authorized by 46 U.S.C. 70117 apply equally to both U.S. and foreign vessels that do not meet the requirements of the regulations. Because we can revoke, at any point, ISSCs for Vessel Security Plans that we approve, we have full discretion in enforcing the rules on those vessels. For foreign flag vessels whose ISSCs are issued by its flag administration, we can enforce the regulations by not allowing the vessel to call at our ports, or we can work with the country issuing the vessel's ISSC to revoke it. We will enforce the regulations equally; however, the comment brought to light the need to clarify § 101.410(b)(8) to include the right of the U.S. to revoke any security plan we approve, and we have amended the section to clarify this requirement.

After reviewing § 101.420, we amended paragraph (b) to clarify that appeals of certain decisions and actions of the District Commander should be made to the Commandant (G-MOC).

Subpart E—Other Provisions

This subpart concerns Declarations of Security, security assessment tools, and credentials for personal identification.

Three commenters stated that the Coast Guard should delegate its authority for reviewing and approving security plans to an RSO, stating that if the Coast Guard reviews and approves all plans, this will interfere with other critical Coast Guard missions.

We believe that it is imperative to maritime homeland security to ensure consistent application of the requirements of parts 101 through 106 and will conduct the reviews and approvals of certain security plans. We do not intend to delegate authority to an RSO at this time. Reconsideration and further delegation of plan approvals may be provided once a stable nationwide foundation for maritime security has been established. Although the Coast Guard is not delegating plan approval authority, we have ensured plan review resources will be sufficient for implementing these regulations while not negatively affecting Coast Guard missions.

Three commenters asked when the Coast Guard would communicate standards for U.S. flag vessels and facilities as to the timing and format of a Declaration of Security. One commenter requested information about how Declaration of Security requirements will be communicated to and coordinated with vessels that do not regularly call U.S. ports and specific facilities.

As specified in § 101.505, the format of a Declaration of Security is described in SOLAS Chapter XI–2, Regulation 10, and the ISPS Code. The timing requirements for the Declaration of Security are specified in §§ 104.255 and 105.245. The format for a Declaration of Security can be found as an appendix to the ISPS Code. We agree that the format requirement was not clearly included in § 101.505(a) when we called out the incorporation by reference. Therefore, we have explicitly included a reference to the format in § 101.505(b).

One commenter asked whether the Declaration of Security requirement applies to vessel-to-vessel or vessel-to-facility interfaces beyond the 12-mile limit but still in the U.S. EEZ.

Vessel-to-vessel activity in the EEZ is not included in these regulations, except if one of the vessels is intending to enter a U.S. port. The regulations do apply to vessels interfacing with OCS facilities.

We received 15 comments regarding security assessment tools. Eleven commenters would like the Coast Guard to formally approve a separate security assessment methodology as one that may be used by a refiner or petrochemical manufacturer, and also to incorporate it by reference. The commenters believe that it is a sophisticated and effective methodology for conducting Facility Security Assessments. One commenter asked whether an owner or operator who has

already completed a risk assessment using a risk assessment tool other than those listed in § 101.510 must conduct a new assessment using one of those tools. Three commenters asked that the Coast Guard provide a list of security assessment tools that would satisfy all DHS and Coast Guard requirements.

The Coast Guard does not intend to approve security assessment tools or incorporate such tools by reference because we prefer to allow flexibility for industry to develop their own tools to meet their specific needs. We have provided a list of examples of security assessment tools in § 101.510; however, this list is not exhaustive. We do not require owners or operators to conduct security assessments using these tools as long as the assessments meet the requirements of these regulations. To clarify that the list in § 101.510 represents some, but not all, assessment tools available for facilitating security assessments, we have amended it to include the word ''may.''

It should be noted that the list in § 101.510 includes a no-cost, user-friendly, web-based, vulnerability-self-assessment tool designed by TSA. This tool was developed by TSA in coordination with other Federal agencies and members of academia and industry as a means to assist vessel and facility owners and operators in completing the security assessments mandated by these maritime security regulations. Any information entered into the tool will not be accessible by TSA or any other Federal agencies unless the owner or operator formally submits this information to TSA. TSA, in coordination with the Coast Guard, is developing guidance that will assist users of the TSA tool. At this time, TSA does not intend to publish a Notice of Proposed Rulemaking requiring the use of this tool.

One commenter asked for clarification of the terms ''self assessments,'' ''security assessments,'' ''risk/threat assessments,'' and ''on-scene surveys.''

Risk/threat assessments and self assessments are not specifically defined in the regulations, but refer to the general practices of assessing where a vessel or facility is at risk. The assessments required in parts 104 through 106 must take into account threats, consequences, and vulnerabilities; therefore, they are most appropriately titled ''security assessments.'' This title also aligns with the ISPS Code. To clarify that §§ 101.510 and 105.205 address security assessments required by subchapter H, we have amended these sections to change the term ''risk'' to the more accurate term ''security.'' ''On-scene surveys'' are explained in the security assessment requirements of parts 104, 105, and 106. As explained in § 104.305(b), for example, the purpose of an on-scene survey is to ''verify or collect information'' required to compile background information and ''consists of an actual survey that examines and evaluates existing vessel protective measures, procedures, and operations.'' An on-scene survey is part of a security assessment.

One commenter stated that the temporary interim rule requirement to institute a photo identification card system for crewmembers is unreasonable because it will cost over $2,000 and will be obsolete when the Transportation Worker Identification Credential (TWIC) requirement is enacted. One commenter stated that some ports are already establishing credentialing programs of varying complexity and scope and emphasized the need for the national TWIC program to be implemented as soon as possible.

The temporary interim rule does not require vessel or facility owners or operators to have a photo identification card system that is vessel or facility specific. The personal identification requirements of § 101.515 are well within the scope of the majority of current identification systems such as driver's licenses and union cards. Vessel and facility owners or operators can use any personal identification that meets the requirements of § 101.515; they do not have to develop their own card systems. Section 101.515 was meant to provide a temporary solution to the criteria for personal identification to facilitate access control until the TWIC criteria could be implemented. TSA is working closely with other agencies of DHS (*e.g.*, the Coast Guard), agencies of DOT (*e.g.*, MARAD), and other government agencies to develop the TWIC and its use to ensure that it can be a practical personal identification system for the transportation community.

Two commenters stated that our regulations will require employers to reissue identification cards when individuals grow beards or mustaches because the photo will not ''accurately depict the individual's current facial appearance.''

Facial hair may not necessarily alter the depiction of an individual on picture identification so much that the individual is no longer identifiable. If the individual depicted on the identification has changed his or her appearance to the extent that the individual is no longer accurately depicted, then a new identification card would be required.

One commenter suggested that commuter ticket books or badges could serve as a form of required identification for passengers on board ferries.

Personal identification remains a requirement in these regulations, as described in § 101.515, to ensure, if needed, the identification of any passenger. A ticket book or badge that meets the requirements of § 101.515 could serve as personal identification. To ease congestion for ferry passengers, we have included alternatives to checking personal identification as described in § 104.292. These alternatives, if used, can expedite access to the ferry while maintaining adequate security.

After further review, and based on comments from several other agencies and Coast Guard field units, we have amended § 101.515 by adding a new provision to clarify that the identification and access control requirements of this subchapter must not be used to delay or obstruct authorized law enforcement officials from being granted access to the vessel, facility, or OCS facility. Authorized law enforcement officials are those individuals who have the legal authority to go on the vessel, facility, or OCS facility for purposes of enforcing or assisting in enforcing any applicable laws. This authority is evident by the presentation of identification and credentials that meet the requirements of § 101.515, as well as other factors such as the uniforms and markings on law enforcement vehicles and vessels. Delaying or obstructing access to authorized law enforcement officials by requiring independent verification or validation of their identification, credential, or purposes for gaining access could undermine compliance and inspection efforts, be contrary to enhancing security in some instances, and be contrary to law. Failure or refusal to permit an authorized law enforcement official presenting proper identification to enter or board a vessel, facility, or OCS facility will subject the operator or owner of the vessel, facility, or OCS facility to the penalties provided in law. In addition, an owner or operator of a vessel (including the Master), facility, or OCS facility that reasonably suspects individuals of using false law enforcement identification or impersonating a law enforcement official to gain unauthorized access, should report such concerns immediately to the COTP.

Two commenters stated concerns regarding standards for seafarers' identification cards and other identifying documents. One commenter stated that the Coast Guard must ensure

that foreign and U.S. requirements for seafarers' identification are consistent. The commenter also stated that the Coast Guard must ensure consistency among U.S. facilities. One commenter urged the Coast Guard to provide a comprehensive and clear explanation of whether the U.S. will be using the new ILO seafarers' identity documents.

We appreciate the commenters' concern regarding standards for seafarers' identification cards and the intentions of the U.S. with regard to international seafarers' identity documents, but these comments are beyond the scope of these rules. We have provided minimum requirements for determining whether an identification credential may be accepted in § 101.515. We also discussed, in detail, our intentions regarding seafarers' identification criteria in the preamble to the ''Implementation of National Maritime Security Initiatives'' temporary interim rule (68 FR 39264).

One commenter supported making foreign-flag shipowners, operators, and ship managers responsible for establishing a vetting program of their newly hired officers and crew, requiring background checks of their seafarers, and having the Coast Guard audit those firms to ensure the vetting is done. The commenter stated that having a system for vetting would eliminate a ''loophole'' that could result in loss of American lives and property.

We will continue a vigorous Port State Control program that will now include verifying compliance with SOLAS and the ISPS Code for foreign-flag SOLAS vessels. We have been working aggressively, both internationally and nationally, to develop seafarer's identification requirements that include the vetting of newly hired officers and crew and that also address background check requirements. Since the implementation of the International Safety Management Code (ISM Code), audits and other quality verifications are now standard in the international maritime community. Therefore, once a seafarer's identification requirement is established, we expect it will be audited under the ISM Code, and foreign flag vessels will not require specific Coast Guard oversight.

One commenter stated that part 102 provisions in the temporary interim rule should make the seafarers' identification documents that comply with ILO–185 acceptable as a substitute for or waiver of a visa for shore leave.

Part 102 has been reserved for the National Maritime Transportation Security Plan, not seafarers' identification. Section 101.515 addresses identification. The requirements in § 101.515 are not waivers for a visa. Visas are a matter of immigration law and are beyond the scope of these final rules.

Part 102—National Maritime Transportation Security

This part is reserved and concerns the development of the overarching National Maritime Transportation Security Plan for sustaining National Maritime Security initiatives.

Procedural

Fourteen commenters addressed the public comment period. One commenter stated that another comment period will be necessary once plans are approved. Six commenters said the 30-day comment period was inadequate and should be lengthened. Five commenters requested a longer comment period specifically for the AIS temporary interim rule.

We did not extend the comment period due to the need to follow the MTSA's statutory deadline for issuance of regulations. We acknowledge that these regulations are being implemented in a short period of time. In this final rule, we require security measures, assessments, and plans for those vessels and facilities we have determined may be involved in a transportation security incident. It is not clear how further comments will benefit security after plan submission is complete. We continually review guidance we issue to implement regulations and welcome feedback on guidance we have developed for these regulations. Regarding AIS specifically, we will be reopening the comment period on our previously published notice titled ''Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters'' (USCG 2003–14878; July 1, 2003; 68 FR 39369).

Three commenters addressed the public meeting held on July 23, 2003. One commenter asked the Coast Guard to hold an additional public meeting in the Houston, Texas, area and proposed several dates in July 2003. Two commenters stated that many came to the public meeting believing that it would be not just a listening session, but also an opportunity to discuss and clarify the proposed regulations, in preparation for submitting written comments before the end of the comment period.

We acknowledge that these regulations are being implemented in a short period of time. Due to the time constraints of the MTSA, however, we held only one public meeting on July 23, 2003. Previous public meetings in January 2002 and in January and February 2003 provided the public several opportunities to discuss various maritime security issues with Coast Guard representatives. Because the opportunity to hear public comments is so important, we set an agenda for the July 2003 meeting that allowed us to hear public comments rather than to debate the issues further. Additionally, the preambles to the temporary interim rules clearly stated our position on maritime security, which did not need further elucidation in a public setting at the expense of receiving stakeholders' comments.

Additional Changes

After further review of this part, we made several non-substantive editorial changes, such as adding plurals and fixing noun, verb, and subject agreements. In addition, the part heading in this part has been amended to align it with all the part headings within this subchapter.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 101.115 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 101.115.

This final rule incorporates by reference SOLAS Chapters XI–1 and XI–2 and the ISPS Code. Specifically, we are incorporating the amendments adopted on December 12, 2002, to the Annex to SOLAS and the ISPS Code, also adopted on December 12, 2002. The material is incorporated for all of subchapter H. The final rule titled ''Automatic Identification System; Vessel Carriage Requirement'' (USCG–2003–24757), found elsewhere in today's **Federal Register**, has its own incorporation by reference section in 33 CFR 164.03.

Regulatory Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A summary of comments on the assessments, our responses, and a summary of the assessments follow.

We received 11 comments relating to the cost of implementing these regulations. Nine commenters asked if DHS plans to offer annual grants to

assist in covering the costs incurred by the operators to satisfy the requirements of the rules. Two commenters stated that compliance with all security requirements should be extended to 2008, or until sufficient monies are allocated by the Congress to cover cost. One commenter stated that the regulations should grant enough flexibility to COTPs to consider a facility's limited resources and cost-effectiveness ratio of implementation when they review the security plan for approval. Three commenters asked how these rules recognize and assist very small ports and small businesses.

We appreciate that the cost of implementing these regulations could have significant impacts on annual revenues for some vessel or facility owners and operators. Pursuant to Section 102 of the MTSA, DOT is required to develop a grant program. DHS is working with DOT on the grant program. At this point, we do not know if Congress will appropriate funds to continue this program and allow for grants on a continuing annual basis. We cannot alter the compliance dates of these regulations because they are mandated by the MTSA and aligned to meet the entry into force date of SOLAS Chapter XI and the ISPS Code. We recognize the difficulty small facilities may have in meeting our security requirements and, therefore, we have developed flexible measures and performance-based standards to allow owners or operators to implement cost-effective security measures. We have made the requirements as flexible as possible and have analyzed the risk to ensure that applicability is focused on those vessels and facilities that may be involved in a transportation security incident.

Two commenters addressed the burdens involved in moving from MARSEC Level 1 to MARSEC Level 2. One commenter strongly urged the Coast Guard to be cautious whenever contemplating raising the MARSEC Level because the commenter claimed that we estimated the cost to the maritime industry of increasing the MARSEC Level from 1 to 2 will be $31 million per day. The other commenter expressed doubt that a facility's security would be substantially increased by hiring local security personnel ''as required'' at MARSEC Level 2.

We agree that each MARSEC Level elevation may have serious economic impacts on the maritime industry. We make MARSEC Level changes in conjunction with DHS to ensure the maritime sector has deterrent measures in place commensurate with the nature of the threat to it and our nation. The financial burden to the maritime sector is one of many factors that we consider when balancing security measure requirements with economic impacts. Furthermore, we disagree with the first commenter's statement of our cost assessment to the maritime industry for an increase in MARSEC Level 1 to MARSEC Level 2. In the Cost Assessment and Initial Regulatory Flexibility Act analyses for the temporary interim rules, we estimated that the daily cost of elevating the MARSEC Level from 1 to 2 is $16 million. We also disagree with the second commenter's inference that hiring local security personnel to guard a facility is required at MARSEC Level 2. Section 105.255 lists ''assigning additional personnel to guard access points'' as one of the enhanced security measures that a facility may take at MARSEC Level 2, but this can be done by reassigning the facility's own staff rather than by hiring local security personnel; however, it is only one of several MARSEC Level 2 security enhancements listed in § 105.255(f), which is not an exclusive list.

Three commenters stated that security measures required under MARSEC Level 3 would pose an unfair economic burden upon an owner or operator and could create an ''industry'' for additional security measures.

The security measures required under MARSEC Level 3 are designed to address the increased threat of a probable or imminent transportation security incident. At this highest level of threat, the maritime industry is vulnerable to a transportation security incident and can be exposed to significant economic losses. Were a maritime transportation security incident to occur, the nation could experience devastating losses, including significant loss of life, serious environmental damage, and severe economic shocks. While we can reasonably expect MARSEC Level 3 to increase the direct costs to businesses attributable to increased personnel or modified operations, we believe the indirect costs to society of the ''ripple effects'' associated with a transportation security incident would greatly outweigh the direct costs to the maritime industry. Additionally, we expect this highest level of threat to occur infrequently.

Five commenters stated that our cost estimates understate the cost for international ships calling on U.S. ports. Three commenters noted that the same parameters used to develop the costs for the U.S. SOLAS vessels should be extrapolated and applied to international ships, adjusted for the time these ships spend in waters subject to the jurisdiction of the U.S. One commenter asked us to explain why only 70 foreign flag vessels were included in our analysis of the cost of the temporary interim rule.

We disagree with the commenters' assertion that our estimate understates the cost for international ships calling on U.S. ports. We developed our estimate assuming that foreign flag vessels subject to SOLAS would be required by their flag state, as signatories to SOLAS, to implement SOLAS and the ISPS Code. The flag administrations of foreign flag SOLAS vessels will account, therefore, for the costs of complying with SOLAS and the ISPS Code. Our analysis accounts for the costs of the final rule to U.S. flag vessels subject to SOLAS. Additionally, we estimate costs for the approximately 70 foreign flag vessels that are not subject to SOLAS that would not need to comply with either SOLAS or the ISPS Code. These vessels must comply with the requirements in 33 CFR part 104 if they wish to continue operating in U.S. ports after July 1, 2004, and we therefore estimate the costs to these vessels.

One commenter suggested taking into greater account the risk factors of the facility and vessel as a whole, rather than simply relying on one factor such as the capacity of a vessel as well as the cost-benefit of facility security to all of the business entities that make up a facility.

The Coast Guard considered an extensive list of risk factors when developing these regulations including, but not limited to, vessel and facility type, the nature of the commerce in which the entity is engaged, potential trade routes, accessibility of facilities, gross tonnage, and passenger capacity. Our Cost Assessments and Regulatory Flexibility Act Analyses are available in the dockets for both the temporary interim rules and the final rules, and they account for companies as whole business entities, not individual vessels or facilities.

One commenter was concerned that the entire list of ships that are directly regulated under part 104 have been designated as ''high risk'' for a transportation security incident. The commenter noted that no account appears to have been taken of the different types of vessels or specific threats and warnings.

We explained in detail in the temporary interim rule (68 FR 39244–6) (part 101) how we used the National Risk Assessment Tool (N–RAT) to determine risks associated with specific

threat scenarios against various classes of targets within the MTS.

Two commenters questioned the accuracy of the estimated average fatalities from a transportation security incident for a large passenger vessel. One commenter reasoned that the ''outstanding'' safety record of the industry in recent history does not substantiate the estimated average fatalities for an accident and, therefore, puts into question our estimated average fatality for a transportation security incident. One commenter urged caution in interpreting figures between safety and security to determine what is a transportation security incident.

Our initial estimated number of fatalities on large passenger ships was based on major maritime accidents over the past century. We noted that historically, the worst maritime accidents (*e.g.*, Titanic, Lusitania, Empress of Ireland) produced fatality rates over 50 percent. However, the commenter is correct in asserting that portions of the large passenger vessel industry have experienced a significant period of time with few accident-related fatalities which can be attributed, in part, to innovations in safety and advances in accident survivability. Therefore, since the dataset used to compile the estimated number of fatalities per accident lacked recent events, we used the lower estimate of 32 percent, which is based on the actual fatality rate of accidents involving small passenger vessels. We acknowledge that small passenger vessels would likely use different safety and survivability measures than large passenger vessels. However, we disagree that that using the 32 percent for the estimated average accident-related fatality rate for large passenger vessels is incorrect—it illustrates a catastrophic failure. The estimated average fatality rate for a transportation security incident is higher than for a safety-related accident because a transportation security incident is perpetrated with the intent to inflict a high casualty rate. Safety measures, therefore, will have some, but not an equivalent level of effectiveness during a transportation security incident. We believe that the average transportation security incident-related fatality rate, in general for those directly regulated under subchapter H, and in particular for large passenger vessels, will result in a ''significant loss of life'' and, therefore, be a transportation security incident.

One commenter asked for clarification on whether the N–RAT results indicated a lower risk for facilities that do not receive vessels on international voyages, even if those voyages are by vessels exceeding 100 gross tons and transiting international waters. The commenter also asked whether Guam and the Northern Marianas Islands are part of the U.S. and whether a domestic voyage may cross international waters.

The N–RAT indicated that vessels on international voyages may be involved in a transportation security incident. In § 101.105, the term ''territory'' includes the Commonwealth of Puerto Rico, all possessions of the U.S., and all lands held by the U.S. under a protectorate or mandate. This includes Guam and the Northern Marianas Islands. A domestic voyage includes a direct transit between two U.S. ports, regardless of whether the vessel transits international waters.

One commenter asked if there is any public benefit to building infrastructure and increasing staffing, stating that the ports have no way to pay for such upgrades.

Using the N–RAT, we determined that significant public benefit accrues if a transportation security incident is avoided or the effects of the transportation security incident can be reduced. These public benefits include human lives saved, pollution avoided, and ''public'' infrastructure, such as national landmarks and utilities, protected.

Three commenters stated that the cost/benefit assessment in the temporary interim rule (68 FR 39276) (part 101) is questionable. One commenter noted that we did not use the most recent industry data. Two commenters stated that cost estimates might be close to accurate but that the benefits were based on assumptions that are difficult to measure.

We used the most reliable economic data available to us from the U.S. Census Bureau among other government data sources. In the notice of public meeting (67 FR 78742, December 20, 2002), we presented a preliminary cost assessment and requested comments and data be submitted to assist us in drafting our estimates. We amended our cost estimates incorporating comments and input we received. While the assessment may or may not be useful to the reader, we must develop a regulatory assessment for all significant rules, as required by Executive Order 12866.

Cost Assessment Summary

The following summary presents the estimated costs of complying with the final rules on Area Maritime Security, Vessel Security, Facility Security, OCS Facility Security, and AIS, which are published elsewhere in today's **Federal Register**. Because the changes in this final rule do not affect the original cost estimates presented in the temporary interim rule (68 FR 39272) (part 101), the costs remain unchanged.

For the purposes of good business practice, or to comply with regulations promulgated by other Federal and State agencies, many companies already have spent a substantial amount of money and resources to upgrade and improve security. The costs shown in this summary do not include the security measures that these companies have already taken to enhance security.

We realize that every company engaged in maritime commerce would not implement the final rules exactly as presented in this assessment. Depending on each company's choices, some companies could spend much less than what is estimated herein, while others could spend significantly more. In general, we assume that each company would implement the final rules based on the type of vessels or facilities it owns or operates, whether it engages in international or domestic trade, and the ports where it operates.

This assessment presents the estimated cost if vessels, facilities, OCS facilities, and areas are operating at MARSEC Level 1, the current level of operations since the events of September 11, 2001. We also estimate the costs for operating for a brief period at MARSEC Level 2, an elevated level of security. We also discuss the potential effects of operating at MARSEC Level 3, the highest level of threat.

We do not anticipate that implementing the final rules will require additional manning aboard vessels or OCS facilities; existing personnel can assume the duties envisioned. For facilities, we anticipate additional personnel in the form of security guards that can be hired through contracting with a private firm specializing in security.

Based on our assessment, the first-year cost of implementing the final rules is approximately $1.5 billion.

Following initial implementation, the annual cost is approximately $884 million, with costs of present value $7.331 billion over the next 10 years (2003–2012, 7 percent discount rate). Estimated costs are as follows.

Vessel Security

Implementing the final rule will affect about 10,300 U.S. flag SOLAS, domestic (non-SOLAS), and foreign non-SOLAS vessels. The first-year cost of purchasing and installing equipment, hiring security officers, and preparing paperwork is approximately $218 million. Following initial implementation, the annual cost is approximately $176 million. Over the

next 10 years, the cost would be present value $1.368 billion.

Facility Security

Implementing the final rule will affect about 5,000 facilities. The first-year cost of purchasing and installing equipment, hiring security officers, and preparing paperwork is an estimated $1.125 billion. Following initial implementation, the annual cost is approximately $656 million. Over the next 10 years, the cost would be present value $5.399 billion.

OCS Facility Security

Implementing the final rule will affect about 40 OCS facilities under U.S. jurisdiction. The first-year cost of purchasing equipment and preparing paperwork is an estimated $3 million. Following initial implementation, the annual cost is approximately $5 million. Over the next 10 years, the cost would be present value $37 million.

Area Maritime Security

Implementing the final rule will affect about 47 COTP zones containing 361 ports. The initial cost of the startup period (June 2003–December 2003) is estimated to be $120 million. Following the startup period, the first year of implementation (2004) is estimated to be $106 million. After the first year of implementation, the annual cost is approximately $46 million. Over the next 10 years, the cost would be present value $477 million.

Automatic Identification System (AIS)

Implementing the final rule will affect about 3,500 U.S. flag SOLAS vessels, domestic (non-SOLAS) vessels in Vessel Traffic Service (VTS) areas, and foreign flag non-SOLAS vessels. The first-year cost of purchasing equipment and training for U.S. vessels (SOLAS and domestic) is approximately $30 million. Following initial implementation, the annual cost is approximately $1 million. Over the next 10 years, the cost for these vessels would be present value $50 million (with replacement of the units occurring 8 years after installation).

MARSEC Levels 2 and 3

MARSEC Level 2 is a heightened threat of a security incident, and intelligence indicates that terrorists are likely to be active within a specific target or class of targets. MARSEC Level 3 is a probable or imminent threat of a security incident. MARSEC Levels 2 and 3 costs are not included in the above summaries because of the uncertainty that arises from the unknown frequency of elevation of the MARSEC Level and the unknown duration of the elevation.

The costs to implement MARSEC Levels 2 and 3 security measures in response to these increased threats do not include the costs of security measures and resources needed to meet MARSEC Level 1 (summarized above) and will vary depending on the type of security measures required to counter the specific nature of higher levels of threat. Such measures could include additional personnel or assigning additional responsibilities to current personnel for a limited period of time.

We did not consider capital improvements, such as building a fence, to be true MARSEC Levels 2 or 3 costs. The nature of the response to MARSEC Levels 2 and 3 is intended to be a quick surge of resources to counter an increased threat level. Capital improvements generally take time to plan and implement and could not be in place rapidly. Capital improvement costs are estimated under MARSEC Level 1 costs.

We did not calculate MARSEC Level 2 cost for the AMS rule because this will be primarily a cost to the Coast Guard for coordinating the heightened MARSEC Level in port and maritime areas.

To estimate a cost for MARSEC Level 2, we made assumptions about the length of time the nation's ports can be expected to operate at the heightened MARSEC Level. For the purpose of this assessment only, we estimate costs to the nation's ports elevating to MARSEC Level 2 twice a year, for 3 weeks each time, for a total period of 6 weeks at MARSEC Level 2. Again, this estimate of 6 weeks annually at MARSEC Level 2 is for the purposes of illustrating the order of magnitude of cost we can expect. Our estimate should not be interpreted as the Coast Guard's official position on how often the nation's ports will operate at MARSEC Level 2.

We estimated that there are Vessel Security Officers aboard all U.S. flag SOLAS vessels and most domestic vessels. We estimated that there will also be key crewmembers that can assist with security duties during MARSEC Level 2 aboard these vessels. We assumed that both Vessel Security Officers and key crewmembers will work 12 hours a day (8 hours of regular time, 4 hours of overtime) during the 42 days that the ports are at MARSEC Level 2. We then estimated daily and overtime rates for Vessel Security Officers and key crewmembers. Given these assumptions, we estimated that elevating the security level to MARSEC Level 2 twice a year each for 21 days will cost vessel owners and operators approximately $235 million annually.

We estimated that every regulated facility will have a Facility Security Officer assigned to it. We also estimated that there will also be a key person that can assist with security duties during MARSEC Level 2 at each facility. We assumed that both Facility Security Officers and key personnel will work 12 hours a day (8 hours of regular time, 4 hours of overtime). For facilities that have to acquire security personnel for MARSEC Level 1, we assumed that during MARSEC Level 2 the number security guards would double for this limited time. For the facilities for which we did not assume any additional guards at MARSEC Level 1, we assumed that during MARSEC Level 2 these would have to acquire a minimal number of security guards. Given these assumptions, we estimated that elevating the security level to MARSEC Level 2 twice a year each for 21 days will cost facility owners and operators approximately $424 million annually.

We estimated that elevating the security level to MARSEC Level 2 twice a year each for 21 days will cost the regulated OCS facility owners and operators approximately $4 million annually. This cost is primarily due to increased cost for OCS Facility Security Officers and available key security personnel.

Other costs that we did not attempt to quantify include possible operational restrictions such as limiting cargo operations to daylight hours or greatly limiting access to facilities or vessels.

MARSEC Level 3 will involve significant restriction of maritime operations that could result in the temporary closure of individual facilities, ports, and waterways either in a region of the U.S. or the entire nation. Depending on the nature of the specific threat, this highest level of maritime security may have a considerable impact on the stakeholders in the affected ports or maritime areas. The ability to estimate the costs to business and government for even a short period at MARSEC Level 3 is virtually impossible with any level of accuracy or analytical confidence due to the infinite range of threats and scenarios that could trigger MARSEC Level 3.

The length and the duration of the increased security level to MARSEC Level 3 will be entirely dependent on the intelligence received and the scope of transportation security incidents or disasters that have already occurred or are imminent. While we can reasonably expect MARSEC Level 3 to increase the direct costs to businesses attributable to increased personnel or modified operations, we believe the indirect costs to society of the ''ripple effects''

associated with sustained port closures would greatly outweigh the direct costs to individual businesses.

The U.S. Marine Transportation System (MTS)

The cost of MARSEC Level 3 can best be appreciated by the benefits of the MTS to the economy. Maritime commerce is the lifeblood of the modern U.S. trade-based economy, touching virtually every sector of our daily business and personal activities.

Annually, the MTS contributes significant benefits to the economy. More than 95 percent of all overseas trade that enters or exits this country moves by ship, including 9 million barrels of oil a day that heats homes and businesses and fuels our automobiles.[1] In addition, over $738 billion of goods are transported annually through U.S. ports and waterways.[2]

Other benefits include the water transportation and the shipping industry that generate over $24 billion in revenue and provides nearly $3 billion of payrolls.[3] The annual economic impact of cruise lines, passengers, and their suppliers is more than $11.6 billion in revenue and 176,000 in jobs for the U.S. economy.[4] Our national defense is also dependent on the MTS. Approximately 90 percent of all equipment and supplies for Desert Storm were shipped from strategic ports via our inland and coastal waterways.[5]

The Ripple Effect of Port Closures on the U.S. Economy

We could not only expect the immediate effects of port and waterway closures on waterborne commerce as described above, but also serious ''ripple effects'' for the entire U.S. economy that could last for months or more, including delayed commerce, decreased productivity, price increases, increased unemployment, unstable financial markets worldwide, and economic recession.

To appreciate the impact, we can examine just the agricultural sector of our economy. Many farm exports are just-in-time commodities, such as cotton shipped to Japan, South Korea, Indonesia, and Taiwan. Asian textile mills receive cotton on a just-in-time basis because these mills do not have warehousing capabilities. A port shutdown may cause U.S. cotton wholesalers to lose markets, as textile producers find suppliers from other nations. U.S. wholesalers would lose sales until shipping is restored.

Another example is the auto industry. A recent shutdown of West Coast ports due to a labor dispute caused an automobile manufacturer to delay production because it was not receiving parts to make its cars. This demonstrates that a port shutdown can create a domino effect, from stalling the distribution of materials to causing stoppages and delays in production to triggering job losses, higher consumer prices, and limited selection.

The macroeconomic effects of the recent shutdown of West Coast ports, while not in response to a security threat, are a good example of the economic costs that we could experience when a threat would necessitate broad-based port closures. The cost estimates of this 11-day interruption in cargo flow and closure of 29 West Coast ports have ranged between $140 million to $2 billion a day, but are obviously high enough to cause significant losses to the U.S. economy.[6]

Another proxy for the estimated costs to society of nationwide port closures and the consequential impact on the U.S. supply chain can be seen by a recent war game played by businesses and government agencies.[7] In that recent war game, a terrorist threat caused 2 major ports to close for 3 days, and then caused a nationwide port closure for an additional 9 days. This closure spanned only 12 days, but resulted in a delay of approximately 3 months to clear the resulting containerized cargo backlog. The economic costs of the closings attributable to manufacturing slowdowns and halts in production, lost sales, and spoilage was estimated at approximately $58 billion. The simulation gauged how participants would respond to an attack and the ensuing economic consequences. Furthermore, a well-coordinated direct attack of multiple U.S. ports could shutdown the world economy by effectively halting international trade flows to and from the U.S. market-the largest market for goods and services in the world.

We believe that the cost to the national economy of a port shutdown due to extreme security threats, while not insignificant, would be relatively small if it only persisted for a few days and involved very few ports. However, if the interruption in cargo flows would persist much longer than the 11-day shutdown recently experienced on the West Coast, the economic loss is estimated to geometrically increase (double) every additional 10 days the ports were closed.[8] At a certain point, companies would start declaring bankruptcies, people would be laid off indefinitely, and the prices of goods would increase. This effect would continue and intensify until alternate economic activities took place, such as the unemployed finding less desirable jobs or companies finding secondary lines of operations and suppliers. Regardless, the economic hardship suffered by industry, labor, and the loss of public welfare due to a sustained nationwide port shutdown may have as significant an effect on the U.S. as the act of terror itself.

Benefit Assessment

The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to ''Applicability of National Maritime Security Initiatives'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a ''family'' of rules that will reinforce and support one another in their implementation. We have ensured, however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to

[1] *See* MTS Fact Sheet available at *www.dot.gov/mts/fact_sheet.htm.*

[2] *See* 2000 Exports and Imports by U.S. Customs District and Port available at *www.marad.dot.gov/statistics/usfwts/.*

[3] U.S. Census Bureau, 1997 Economic Census, Transportation and Warehousing-Subject Series.

[4] *See* footnote 1.

[5] *See* footnote 1.

[6] *See Lost Earnings Due to West Coast Port Shutdown-Preliminary Estimate,* Patrick Anderson, October 7, 2002, available at *http://www.AndersonEconomicGroup.com;* An Assessment of the Impact of West Coast Container Operations and the Potential Impacts of an Interruption of Port Operations, 2000, Martin Associates, October 23, 2001, available from the Pacific Maritime Association. These two studies were widely quoted by most U.S. news services including Sam Zuckerman, San Francisco Chronicle, October 2002.

[7] The war game simulation was designed and sponsored by Booz Allen Hamilton and The Conference Board, details available at *http://www.boozallen.com/.*

[8] *See* Anderson.

double-count the risk reduced, refer to ''Benefit Assessment'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39274) (part 101).

We determined annual risk points reduced for each of the six final rules using the N–RAT. Table 1 presents the annual risk points reduced by the final rules. As shown, the final rule for vessel security reduces the most risk points annually. The final rule for AIS reduces the least.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by final rules				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Vessels	778,633	3,385	3,385	3,385	1,317
Facilities	2,025	469,686	.....	2,025	.....
OCS Facilities	41	.....	9,903	.....	.....
Port Areas	587	587	.....	129,792	105
Total	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented the cost effectiveness, or dollars per risk point reduced, in two ways: First, we compared first-year cost to first-year benefit, because first-year cost is the highest in our assessment as companies develop security plans and purchase equipment. Second, we compared the 10-year present value cost to the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES

Item	Final rule				
	Vessel security	Facility security	OCS Facility security	AMS plans	AIS *
First-Year Cost (millions)	$218	$1,125	$3	$120	$30
First-Year Benefit	781,285	473,659	13,288	135,202	1,422
First-Year Cost Effectiveness ($/Risk Point Reduced)	$279	$2,375	$205	$890	$21,224
10-Year Present Value Cost (millions)	$1,368	$5,399	$37	$477	$26
10-Year Present Value Benefit	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year Present Value Cost Effectiveness ($/Risk Point Reduced)	$233	$1,517	$368	$469	$2,427

* Cost less monetized safety benefit.

As shown, the final rule for vessel security is the most cost effective. This is due to the nature of the security measures we expect vessels will have to take to ensure compliance as well as the level of risk that is reduced by those measures. Facility security is less cost effective because facilities incur higher costs for capital purchases (such as gates and fences) and require more labor (such as security guards) to ensure security. OCS Facility and AMS Plans are almost equally cost effective; the entities these final rules cover do not incur the highest expenses for capital equipment, but on this relative scale, they do not receive higher risk reduction in the N–RAT, either. The AIS final rule is the least cost effective, though it is important to remember that AIS provides increased maritime domain awareness and navigation safety, which is not robustly captured using the N–RAT.

Small Entities

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

We found that the facilities (part 105), vessels (part 104), and AIS rules may have a significant impact on a substantial number of small entities. However, we were able to certify no significant economic impact on a substantial number of small entities for this final rule and the Area Maritime Security (part 103) and OCS facility security (part 106) final rules. A complete small entity analysis may be found in the ''Cost Assessment and Final Regulatory Flexibility Act Analysis'' for these final rules in each of their respective dockets, where indicated under **ADDRESSES.**

We received comments regarding small entities; these comments are discussed within the ''Discussion of Comments and Changes'' section of this final rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These

Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be required to take in order to comply with each respective final rule. We have not created Compliance Guides for this final rule (part 101) or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

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

Collection of Information

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The final rules are covered by two existing (OMB)-approved collections—1625–0100 [formerly 2115–0557] and 1625–0077 [formerly 2115–0622].

Comments regarding collection of information are addressed in the ''Discussion of Comments and Changes'' sections of each final rule. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

Federalism

Executive Order 13132 requires the Coast Guard to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, the Coast Guard may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications and a substantial direct effect on the States. This final rule requires those States that own or operate vessels or facilities that may be involved in a transportation security incident to conduct security assessments of their vessels and facilities and to develop security plans for their protection. These plans must contain measures that will be implemented at each of the three MARSEC Levels and must be reviewed and approved by the Coast Guard.

Additionally, the Coast Guard has reviewed the MTSA with a view to whether we may construe it as non-preemptive of State authority over the same subject matter. We have determined that it would be inconsistent with the federalism principles stated in the Executive Order to construe the MTSA as not preempting State regulations that conflict with the regulations in this final rule. This is because owners or operators of facilities and vessels—that are subject to the requirements for conducting security assessments, planning to secure their facilities and vessels against threats revealed by those assessments, and complying with the standards, both performance and specific construction, design, equipment, and operating requirements—must have one uniform, national standard that they must meet. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they moved from State to State. Therefore, we believe that the federalism principles enumerated by the Supreme Court in *U.S.* v. *Locke,* 529 U.S. 89 (2000) regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulation and control of vessels for security purposes. But, the same considerations apply to facilities, at least insofar as a State law or regulation applicable to the same subject for the purpose of protecting the security of the facility would conflict with a Federal regulation; in other words, it would either actually conflict or would frustrate an overriding Federal need for uniformity.

Finally, it is important to note that the regulations implemented by this final rule bear on national and international commerce where there is no constitutional presumption of concurrent State regulation. Many aspects of these regulations are based on the U.S. international treaty obligations regarding vessel and port facility security contained in SOLAS and the complementary ISPS Code. These international obligations reinforce the need for uniformity regarding maritime commerce.

Notwithstanding the foregoing preemption determinations and findings, the Coast Guard has consulted extensively with appropriate State officials, as well as private stakeholders during the development of this final rule. For these final rules, we met with the National Conference of State Legislatures (NCSL) Taskforce on Protecting Democracy on July 21, 2003, and presented briefings on the temporary interim rules to the NCSL's Transportation Committee on July 23, 2003. We also briefed several hundred State legislators at the American Legislative Exchange Council on August 1, 2003. We held a public meeting on July 23, 2003, with invitation letters to all State homeland security representatives. A few State representatives attended this meeting and submitted comments to a public docket prior to the close of the comment period. The State comments to the docket focused on a wide range of concerns including consistency with international requirements and the protection of sensitive security information.

One commenter stated that there should be national uniformity in implementing security regulations on international shipping.

As stated in the temporary interim rule for part 101 (68 FR 39277), we believe that the federalism principles enumerated by the Supreme Court in *U.S.* v. *Locke,* 529 U.S. 89 (2000), regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulations and control of vessels for security purposes. It would be inconsistent with the federalism principles stated in Executive Order 13132 to construe the MTSA as not preempting State regulations that conflict with these regulations. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they move from state to state.

Ten commenters addressed the disclosure of security plan information. One commenter advocated making security plans public. One commenter was concerned that plans will be disclosed under FOIA. One commenter requested that mariners and other employees, whose normal working conditions are altered by a Vessel or Facility Security Plan, be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because some State laws require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter was particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of conflicting State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is generally exempt from disclosure under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

One commenter stated that there is a ''real cost'' to implementing security measures, and it is significant. The commenter stated that there is a disparity between Federal funding dedicated to air transportation and maritime transportation and that the Federal government should fund maritime security at a level commensurate with the relative security risk assigned to the maritime transportation mode. Further, the commenter stated that, in 2002, some State-owned ferries carried as many passengers as one of the State's busiest international airports and provided unique mass transit services; therefore, the commenter supported the Alternative Security Program provisions of the temporary interim rule to enable a tailored approach to security.

The viability of a ferry system to provide mass transit to a large population is undeniable and easily rivals other transportation modes. We developed the Alternative Security Program to encompass operations such as ferry systems. We recognize the concern about the Federal funding disparity between the maritime transportation mode and other modes; however, this disparity is beyond the scope of this rule.

One commenter stated that while he appreciated the urgency of developing and implementing maritime security plans, the State would find it difficult to complete them based on budget cycles and building permit requirements. At the briefings discussed above, several NCSL representatives also voiced concerns over the short implementation period. In contrast, other NCSL representatives were concerned that security requirements were not being implemented soon enough.

The implementation timeline of these final rules follows the mandates of the MTSA and aligns with international implementation requirements. While budget-cycle and permit considerations are beyond the scope of this rule, the flexibility of these performance-based regulations should enable the majority of owners and operators to implement the requirements using operational controls, rather than more costly physical improvement alternatives.

Other concerns raised by the NCSL at the briefings mentioned above included questions on how the Coast Guard will enforce security standards on foreign flag vessels and how multinational crewmember credentials will be checked.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, Congress explicitly found that ''it is in the best interests of the U.S. to implement new international instruments that establish'' a maritime security system. We agree and will exercise Port State Control to ensure that foreign vessels have approved plans and have implemented adequate security standards on which these rules are based. If vessels do not meet our security requirements, the Coast Guard may prevent those vessels from entering the U.S. or take other necessary measures that may result in vessel delays or detentions. The Coast Guard will not hesitate to exercise this authority in appropriate cases. We discuss the ongoing initiatives of ILO and the requirements under the MTSA to develop seafarers' identification criteria in the temporary interim rule titled ''Implementation of National maritime Security Initiatives''(68 FR 39264) (part 101). We will continue to work with other agencies to coordinate seafarer access and credentialing issues. These final rules will also ensure that vessel and facility owners and operators take an active role in deterring unauthorized access.

One commenter, as well as participants of the NCSL, noted that some State constitutions afford greater privacy protections than the U.S. Constitution and that, because State officers may conduct vehicle screenings, State constitutions will govern the legality of the screening. The commenter also noted that the regulations provide little guidance on the scope of vehicle screening required under the regulations.

The MTSA and this final rule are consistent with the liberties provided by the U.S. Constitution. If a State constitutional provision frustrates the implementation of any requirement in the final rule, then the provision is preempted pursuant to Article 6, Section 2, of the U.S. Constitution. The Coast Guard intends to coordinate with TSA and BCBP in publishing guidance on screening.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This final rule is exempted from assessing the effects of

the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)). We did not receive comments regarding the Unfunded Mandates Reform Act.

Taking of Private Property

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

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this final rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive comments regarding the protection of children.

Indian Tribal Governments

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

Energy Effects

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

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased MARSEC Levels. We did not receive comments regarding energy effects.

Environment

We have considered the environmental impact of this final rule and concluded that, under Commandant Instruction M16475.lD, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this final rule is categorically excluded, under figure 2–1, paragraphs (34)(a), (34)(c), (34)(d), and (34(e) of the Instruction from further environmental documentation.

This final rule concerns security assessments, plans, training, positions, and organizations along with vessel equipment requirements that will contribute to a higher level of marine safety and security for U.S. ports. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION.**

This final rule will not significantly impact the coastal zone. Further, the execution of this rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone. We did not receive comments regarding the environment.

List of Subjects

33 CFR Part 2

Administrative practice and procedure, Law enforcement.

33 CFR Part 101

Facilities, Harbors, Maritime security, Ports, Security assessments, Security plans, Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 102

Maritime security.

■ Accordingly, the Coast Guard amends 33 CFR part 2 as follows and the interim rule adding 33 CFR parts 101 and 102 that was published at 68 FR 39240 on July 1, 2003, and amended at 68 FR 41914 on July 16, 2003, is adopted as a final rule with the following changes:

PART 2—JURISDICTION

■ 1. Revise the authority citation for part 2 to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1222; Pub. L. 89–670, 80 Stat. 931, 49 U.S.C. 108; Pub. L. 107–296, 116 Stat. 2135, 2249, 6 U.S.C. 101 note and 468; Department of Homeland Security Delegation No. 0170.1.

§ 2.22 [Amended]

■ 2. In § 2.22(a)(1)(i), after the words ''within subtitle II'', add the words ''and subtitle VI''.

PART 101—MARITIME SECURITY: GENERAL

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 4. Revise the heading to part 101 to read as shown above.

■ 5. In § 101.100, in the introductory text of paragraph (a), remove the word ''part'' and add, in its place, the word ''subchapter'', and add new paragraph (c) to read as follows:

§ 101.100 Purpose.

* * * * *

(c) The assessments and plans required by this subchapter are intended for use in implementing security measures at various MARSEC Levels. The specific security measures and their implementation are planning criteria based on a set of assumptions made during the development of the security assessment and plan. These assumptions may not exist during an actual transportation security incident.

■ 6. In § 101.105—

■ a. In the definition of ''Barge fleeting facility'', remove the word ''permitted'' and add, in its place, the words ''subject to permitting'', and, after the words ''33 CFR part 322'', add the words '', part 330, or pursuant to a regional general permit'';

■ b. In the definition of ''Cargo'', at the end of the paragraph, add the words '', except dredge spoils'';

■ c. In the definition for ''Certain Dangerous Cargo (CDC)'', remove the text ''33 CFR 160.203'' and add, in its place, the text ''33 CFR 160.204'';

■ d. In the definition of ''Company Security Officer (CSO)'', remove the text ''OSC'' wherever it appears, and add, in its place, the text ''OCS'' and remove the word ''COTP'' and add, in its place, the words ''Coast Guard'';

■ e. In the definition for ''Declaration of Security (DoS)'', remove the word

''interface'' wherever it appears and add, in its place, the word ''activity'';

■ f. In the definition for ''Passenger vessel'', paragraph (1), after the word ''passengers'' add the words '', including at least one passenger-for-hire'';

■ g. In the definitions for ''Vessel-to-facility interface'', ''Vessel-to-port interface'', and ''Vessel-to-vessel activity'' remove the word ''goods'' wherever it appears and add, in its place, the words ''cargo, vessel stores,'';

■ h. Revise the definitions for ''Dangerous substances or devices'', ''International voyage'', ''Owner or operator'', ''Unaccompanied baggage'', and ''Waters subject to the jurisdiction of the U.S.'' to read as set out below; and

■ i. Add, in alphabetical order, definitions for ''Breach of security'', ''Cargo vessel'', ''Dangerous goods and/or hazardous substances'', ''General shipyard facility'', and ''Public access facility'' to read as follows:

§ 101.105 Definitions.

* * * * *

Breach of security means an incident that has not resulted in a transportation security incident, in which security measures have been circumvented, eluded, or violated.

* * * * *

Cargo vessel means a vessel that carries, or intends to carry, cargo as defined in this section.

* * * * *

Dangerous goods and/or hazardous substances, for the purposes of this subchapter, means cargoes regulated by parts 126, 127, or 154 of this chapter.

Dangerous substances or devices means any material, substance, or item that reasonably has the potential to cause a transportation security incident.

* * * * *

General shipyard facility means—

(1) For operations on land, any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment, or rebuilding of any vessel, including graving docks, building ways, ship lifts, wharves, and pier cranes; the land necessary for any structures or appurtenances; and the equipment necessary for the performance of any function referred to in this definition; and

(2) For operations other than on land, any vessel, floating drydock, or barge used for, or a type that is usually used for, activities referred to in paragraph (1) of this definition.

* * * * *

International voyage means a voyage between a country to which SOLAS applies and a port outside that country. A country, as used in this definition, includes every territory for the internal relations of which a contracting government to the convention is responsible or for which the United Nations is the administering authority. For the U.S., the term ''territory'' includes the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the U.S. under a protectorate or mandate. For the purposes of this subchapter, vessels solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian, are considered on an ''international voyage'' when on a voyage between a U.S. port and a Canadian port.

* * * * *

Owner or operator means any person or entity that owns, or maintains operational control over, any facility, vessel, or OCS facility subject to this subchapter. This includes a towing vessel that has operational control of an unmanned vessel when the unmanned vessel is attached to the towing vessel and a facility that has operational control of an unmanned vessel when the unmanned vessel is not attached to a towing vessel and is moored to the facility; attachment begins with the securing of the first mooring line and ends with the casting-off of the last mooring line.

* * * * *

Public access facility means a facility—

(1) That is used by the public primarily for purposes such as recreation, entertainment, retail, or tourism, and not for receiving vessels subject to part 104;

(2) That has minimal infrastructure for servicing vessels subject to part 104 of this chapter; and

(3) That receives only:

(i) Vessels not subject to part 104 of this chapter, or

(ii) Passenger vessels, except:

(A) Ferries certificated to carry vehicles;

(B) Cruise ships; or

(C) Passenger vessels subject to SOLAS Chapter XI.

* * * * *

Unaccompanied baggage means any baggage, including personal effects, that is not being brought on board on behalf of a person who is boarding the vessel.

* * * * *

Waters subject to the jurisdiction of the U.S., for purposes of this subchapter, includes all waters described in section 2.36(a) of this chapter; the Exclusive Economic Zone, in respect to the living and non-living resources therein; and, in respect to facilities located on the Outer Continental Shelf of the U.S., the waters superjacent thereto.

■ 7. In § 101.120—

■ a. In paragraph (b)(1), remove the words ''engage on international voyages and facilities that serve only vessels on international voyages'' and add, in their place, the words ''are subject to SOLAS Chapter XI'';

■ b. In paragraph (b)(3), add the following words to the end of the last sentence: ''and a vessel, facility, or Outer Continental Shelf facility specific security assessment report generated under the Alternative Security Program'';

■ c. Add paragraph (b)(4) to read as set out below;

■ d. Revise paragraph (d) to read as set out below;

■ e. Add paragraphs (e) and (f) to read as follows:

§ 101.120 Alternatives.

* * * * *

(b) * * *

(4) Owners or operators shall make available to the Coast Guard, upon request, any information related to implementation of an approved Alternative Security Program.

* * * * *

(d) *Amendment of Approved Alternative Security Programs.* (1) Amendments to an Alternative Security Program approved under this section may be initiated by—

(i) The submitter of an Alternative Security Program under paragraph (c) of this section; or

(ii) The Coast Guard upon a determination that an amendment is needed to maintain the security of a vessel or facility. The Coast Guard will give the submitter of an Alternative Security Program written notice and request that the submitter propose amendments addressing any matters specified in the notice. The submitter will have at least 60 days to submit its proposed amendments.

(2) Proposed amendments must be sent to the Commandant (G–MP). If initiated by the submitter, the proposed amendment must be submitted at least 30 days before the amendment is to take effect unless the Commandant (G–MP) allows a shorter period. The Commandant (G–MP) will approve or disapprove the proposed amendment in accordance with paragraph (f) of this section.

(e) *Validity of Alternative Security Program.* An Alternative Security

Program approved under this section is valid for 5 years from the date of its approval.

(f) The Commandant (G–MP) will examine each submission for compliance with this part, and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

■ 8. Add the text to § 101.125 to read as follows:

§ 101.125 Approved Alternative Security Programs.

The following have been approved, by the Commandant (G–MP), as Alternative Security Programs, which may be used by vessel or facility owners or operators to meet the provisions of parts 104, 105, or 106 of this subchapter, as applicable:

(a) American Gaming Association Alternative Security Program, dated September 11, 2003.

(b) American Waterways Operators Alternative Security Program for Tugboats, and Towboats and Barges, dated September 24, 2003.

(c) Passenger Vessel Association Industry Standards for Security of Passenger Vessels and Small Passenger Vessels, dated September 17, 2003.

§ 101.205 [Amended]

■ 9. In § 101.205, in table 101.205, remove the words ''Elevated: Blue'' and ''Guarded: Yellow.'', and add, in their place, the words ''Guarded: Blue'' and ''Elevated: Yellow'' respectively.

§ 101.300 [Amended]

■ 10. In § 101.300—

■ a. In paragraph (a), remove the words ''a Maritime Security Directive issued under section 101.405 of this part'' and add, in their place, the words ''an electronic means, if available''; and

■ b. In paragraphs (c)(1) and (c)(2), remove the word ''confirm'' and add, in its place, the words ''ensure confirmation''.

§ 101.405 [Amended]

■ 11. In § 101.405(a)(2), remove the words ''require the owner or operator to prove that they have a 'need to know' the information in the MARSEC Directive and that they are a 'covered person,' as those terms are defined in 49 CFR part 1520'' and add, in their place, the words ''require owners or operators to prove that they are a person required by 49 CFR 1520.5(a) to restrict disclosure of and access to sensitive security information, and that under 49 CFR 1520.5(b), they have a need to know sensitive security information''.

§ 101.410 [Amended]

■ 12. In § 101.410(b)(8), remove the words ''For U.S. vessels, suspension or revocation of security plan approval'', and add, in their place, the words ''Suspension or revocation of a security plan approved by the U.S.''.

■ 13. In § 101.420, revise paragraph (b) to read as follows:

§ 101.420 Right to appeal.

* * * * *

(b) Any person directly affected by a decision or action taken by a District Commander, whether made under this subchapter generally or pursuant to paragraph (a) of this section, with the exception of those decisions made under § 101.410 of this subpart, may appeal that decision or action to the Commandant (G–MP), according to the procedures in 46 CFR 1.03–15. Appeals of District Commander decisions or actions made under § 101.410 of this subpart should be made to the Commandant (G√MOC), according to the procedures in 46 CFR 1.03–15.

* * * * *

■ 14. In § 101.505(b), at the end of the paragraph, add a sentence to read as follows:

§ 101.505 Declaration of Security (DoS).

* * * * *

(b) * * * A DoS must, at a minimum, include the information found in the ISPS Code, part B, appendix 1 (Incorporated by reference, see § 101.115).

* * * * *

§ 101.510 [Amended]

■ 15. In § 101.510, in the introductory text—

■ a. Remove the word ''risk'' and add, in its place, the word ''security''; and

■ b. After the words ''These tools'', add the word ''may''.

■ 16. In § 101.515 add paragraph (c) to read as follows:

§ 101.515 Personal identification.

* * * * *

(c) Vessel, facility, and OCS facility owners and operators must permit law enforcement officials, in the performance of their official duties, who present proper identification in accordance with this section to enter or board that vessel, facility, or OCS facility at any time, without delay or obstruction. Law enforcement officials, upon entering or boarding a vessel, facility, or OCS facility, will, as soon as practicable, explain their mission to the Master, owner, or operator, or their designated agent.

PART 102—MARITIME SECURITY: NATIONAL MARITIME TRANSPORATION SECURITY [RESERVED]

■ 17. Revise the heading to part 102 to read as shown above.

Dated: October 8, 2003.

Thomas H. Collins,

Admiral, Coast Guard, Commandant.

[FR Doc. 03–26345 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 103

[USCG–2003–14733]

RIN 1625–AA42

Area Maritime Security

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, the temporary interim rule published on July 1, 2003, that establishes U.S. Coast Guard Captains of the Ports as Federal Maritime Security Coordinators, and establishes requirements for Area Maritime Security Plans and Area Maritime Security Committees. This rule is one in a series of final rules on maritime security published in today's **Federal Register**. To best understand this final rule, first read the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in today's **Federal Register**.

DATES: This final rule is effective November 21, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14733 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Lieutenant Commander Richard Teubner (G–MPS–2), U.S. Coast Guard by telephone 202–267–4129 or by electronic mail *rteubner@comdt.uscg.mil*. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled ''Area Maritime Security'' in the **Federal Register** (68 FR 39284). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41914).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some of which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' that contained comments in that temporary interim rule, plus comments on the ''Vessel Security'' temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same letter to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider comments received after the period for receipt of comments closed on July 31, 2003.

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the ''Discussion of Comments and Changes'' section of this preamble.

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. To view a copy of the complete regulatory text with the changes shown in this final rule, *see http://www.uscg.mil/hq/g-m/mp/index.htm*.

Background and Purpose

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the ''Background and Purpose'' section in the preamble to the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in this issue of the **Federal Register**.

Discussion of Comments and Changes

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. For example, discussions of comments that requested clarification or changes to the Declaration of Security procedures are duplicated in the preambles to parts 104, 105, and 106. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG–2003–14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

Subpart A—General

This subpart concerns applicability and applies the requirements for Area Maritime Security to all vessels and facilities located in, on, under, or adjacent to waters subject to the jurisdiction of the U.S.

One commenter asked who would be ensuring the integrity of security training and exercise programs.

Since the events of September 11, 2001, the Coast Guard has developed a directorate responsible for port, vessel, and facility security. This directorate oversees implementation and enforcement of the regulations found in parts 101 through 106. Additionally, owners and operators of vessels and facilities will be responsible for recordkeeping regarding training, drills, and exercises, and the Coast Guard will review these records during periodic inspections.

Two commenters were concerned about the breadth of the regulations. One commenter asked that the regulations be broadened to allow for exemptions. One commenter stated that the applicability as described in § 101.110 is ''much too general,'' stating that it can be interpreted as including a canoe tied up next to a floating dock in front of a private home. The commenter concluded that such a broad definition would generate ''a large amount of confusion and discontent'' among recreational boaters and waterfront homeowners.

Our applicability for the security regulations in 33 CFR chapter I, subchapter H, is for all vessels and facilities; however, parts 104, 105, and 106 directly regulate those vessels and facilities we have determined may be involved in transportation security incidents, which does not include canoes and private residences. For example, § 104.105(a) applies to commercial vessels; therefore, a recreational boater is not regulated under part 104. If a waterfront homeowner does not meet any of the specifications in § 105.105(a), the waterfront homeowner is not regulated under part 105. It should be noted that all waterfront areas and boaters are covered by parts 101 through 103 and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various Maritime Security (MARSEC) Levels that may apply to them. Security zones and other measures to control vessel movement are some examples of AMS Plan actions that may affect a homeowner or a recreational boater. Additionally, the COTP may impose measures, when necessary, to prevent injury or damage or to address a specific security concern.

Six commenters stated that the term ''fleeting facility'' in § 105.105(a)(4) is more general than the definition of a ''barge fleeting facility'' in § 101.105. The commenters pointed out that temporary staging areas of barges, or those areas for the breaking and making of tows provided by the U.S. Army Corps of Engineers, are not included in the definition of ''barge fleeting facility'' because they are not ''commercial fleeting areas.'' The commenters suggested that these areas be included in AMS Plans.

We agree with the commenters and are amending § 105.105(a)(4) to make it consistent with the definition stated in § 101.105 for ''barge fleeting facility.'' With regards to barge fleeting areas that

are provided by the U.S. Army Corps of Engineers, in accordance with § 105.105(b), those facilities that are not subject to part 105 will be covered by parts 101 through 103 of this subchapter and will be included in AMS Plans.

We received comments from the Environmental Protection Agency regarding the effects of our regulations on EPA-regulated oil facilities. These comments focused primarily on the potential overlapping provisions of 33 CFR part 105 and 40 CFR part 112. Overlap exists in four major areas: Notification of security incidents, fencing and monitoring, evacuation procedures, and security assessments. In cases of overlapping provisions for oil facilities regulated both in parts 105 and 112, the requirements in our final rules and EPA rulemakings do not supplant one another. Additionally, an EPA-regulated facility need not amend the facility's Spill Prevention Control and Countermeasure Plan or Facility Response Plan, as we first stated in the temporary interim rule (68 FR 39251) (part 101). We will be working further with EPA in the implementation of these final rules to minimize the burden to the facilities while ensuring that these facilities are secure. It is our belief that response plans for EPA-regulated oil facilities will serve as an excellent foundation for security plans that may be required under our regulations.

EPA asked for clarification for facilities adjacent to the navigable waters that handle or store cargo that is hazardous or a pollutant but may not be marine transportation related facilities. These facilities are covered by parts 101 through 103 of subchapter H and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various MARSEC Levels that may apply to them. The AMS Assessment may reveal that these EPA-regulated facilities may be involved in a transportation security incident and the COTP may direct these facilities, through orders issued under existing COTP authority, to implement security measures based on the facilities' operations and the MARSEC Level. We encourage owners and operators of these EPA-regulated facilities, as well as representatives from EPA, to participate in AMS Committee activities.

EPA asked for further clarification on drills and exercises requirements. As we stated in the temporary interim rule, non-security drills and exercises may be combined with security drills to minimize burden. Additionally, EPA-regulated facilities that conduct drills not related to security are encouraged to communicate with the local COTP and coordinate their drills at the area level. It is our intention to give facilities and vessels in the port area as much notice as practicable prior to an AMS Plan exercise to reduce the burden to those entities. Again, we encourage owners and operators of these EPA-regulated facilities, and EPA, to participate in AMS Committee activities to maximize coordination and minimize burden.

EPA asked us to clarify the role of Area Contingency Plans with the requirements of our final rules. Our rules are intended to work in concert with Area Contingency Plans and do not preempt their requirements. We envision that many members of the Area Committees who are responsible for implementing Area Contingency Plans will also become members of the AMS Committee. This participation will help ensure that implementing an AMS Plan will not conflict with an Area Contingency Plan.

Finally, EPA asked for clarification on requirements for marine transportation related facilities that handle petroleum oil, non-petroleum oil, and edible oil. These facilities are directly regulated under § 105.105(a)(1) and must meet the requirements of part 105.

Subpart B—Federal Maritime Security Coordinator (FMSC)

This subpart designates the Coast Guard COTP as the Federal Maritime Security Coordinator and provides a description of the COTP's authority as Federal Maritime Security Coordinator to establish, convene, and direct the AMS Committee.

Three commenters recommended developing an International Maritime Organization (IMO) list of port facilities to help foreign shipowners identify U.S. facilities not in compliance with subchapter H. In a related comment, there was a request for the Coast Guard to maintain and publish a list of non-compliant facilities and ports because a COTP may impose one or more control and compliance measures on a domestic or foreign vessel that has called on a facility or port that is not in compliance.

We do not intend to publish a list of each individual facility that complies or does not comply with part 105. As discussed in the temporary interim rule (68 FR 39262) (part 101), our regulations align with the requirements of the International Ship and Port Facility Security (ISPS) Code, part A, section 16.5, by using the AMS Plan to satisfy our international obligations to communicate to IMO, as required by the International Convention for Safety of Life at Sea, 1974 (SOLAS) Chapter XI–2, regulation 13.3, the locations within the U.S. that are covered by an approved port facility security plan. Any U.S. facility that receives vessels subject to SOLAS is required to comply with part 105.

Subpart C—Area Maritime Security (AMS) Committee

This subpart describes the composition and responsibilities of the AMS Committee.

One commenter supported the creation of AMS Committees, stating that through the partnership between industry and the Coast Guard, the committees will develop a comprehensive plan for the security of the port.

Two commenters supported the creation of AMS Committees if they were composed of appropriately experienced representatives from a variety of sources in the port. One commenter stated that the AMS Committee allows for ''port specific'' appropriate risk mitigation as opposed to a blanket risk mitigation policy placed on the entire U.S. waterway system and will strengthen the AMS Plan with the ''buy in'' of the maritime community.

We agree with the commenters and believe that the AMS Committee is a vital link to ensuring the port community is involved in security and its implementation. The inclusive nature of the AMS Committee and the active involvement of a variety of port stakeholders, bringing their experience within the maritime community to the table, will enhance the success of the AMS Committee in drafting the AMS Plan.

One commenter stated that the AMS Committee should have the responsibility to identify Federal, State, Indian Tribal, and local government agencies and law enforcement entities with jurisdiction over port-related matters.

We believe the responsibilities of Federal, State, Indian Tribal, and local government agencies and law enforcement entities with jurisdiction over port security related matters should be addressed in the AMS Plan and, therefore, have amended § 103.505.

Six commenters requested that the Coast Guard establish, without delay, an AMS Committee for the Outer Continental Shelf (OCS) portion of the Gulf of Mexico as an essential step in moving the various Federal law enforcement agencies and industry toward a mutual understanding of the response to a transportation security incident on the Outer Continental Shelf.

We intend to cover OCS facilities in the Gulf of Mexico by a single, District-

wide plan. The establishment of an AMS Committee for the OCS facilities in the Gulf of Mexico was discussed at recent Gulf Safety Committee and National Offshore Safety Advisory Committee (NOSAC) meetings. We intend to form an AMS Committee for this area in the near future. Additionally, owners and operators of OCS facilities are encouraged to participate on the AMS Committee of the COTP zone that is most relevant to their operations.

We received nine comments dealing with the protection of information shared with the AMS Committee. One commenter recommended that threat and risk assessments be kept at the government level so that this type of information would not be available to the public. Five commenters suggested that security plans or proprietary information regarding facilities or vessels be classified as confidential and not be shared with the AMS Committee. Four commenters requested that uniform guidance be provided to the AMS Committee on the handling of sensitive security information.

Section 103.300 provides that each AMS Committee will operate under a written charter that, among other items, details the rules for handling and protecting classified, sensitive security, commercially sensitive, and proprietary information. Threat and risk assessments developed by the AMS Committee will be embodied in written reports that will be designated sensitive security information and hence will not be available to the public.

Three commenters stated that the regulations do not indicate that the AMS Committee will function in a manner consistent with the procedures of Navigation and Vessel Inspection Circular (NVIC) 09–02, Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports. Two commenters stated that the regulations did not specify the identity of the ''chartering entity'' for the AMS Committee.

Section 101.105 states that the port security committee established under NVIC 09–02 may be the AMS Committee. The requirements for AMS Committees described in part 103 are consistent with NVIC 09–02. Therefore, AMS Committees will function in a manner consistent with the procedures of NVIC 09–02, unless the Committee agrees in its charter to a different arrangement. The AMS Committee is chartered under the direction of the COTP.

We received nine comments on AMS Committee participation. Three commenters urged the Coast Guard to include the recreational boating community in all decisions that could limit recreational boaters' access to the water, stating that the future health of the community depends on reasonable access to the nation's waterways. Two commenters requested that private industry facility operators be allowed to fully participate in the AMS Committee. One commenter requested that utility representatives be allowed to fully participate in the AMS Committee. One commenter requested that government agencies that have roles in maritime and cargo security be involved in the AMS Committee. One commenter requested that representatives from the charterboat industry be included as AMS Committee members.

We encourage members of all affected communities, including small businesses, utilities, government officials, charterboats, and recreational boating, to become involved in maritime security through their local AMS Committees. Where appropriate, AMS Committees should include representatives from associations that represent all of these communities. Additionally, to ensure consistency across modes of transportation and with other Federal security programs, the Coast Guard intends to invite officials nominated by other Federal agencies, including the Transportation Security Administration (TSA), the Bureau of Customs and Border Protection and the Maritime Administration to participate in, and to appoint them as members of, the AMS Committees.

Eight commenters suggested that the criteria for AMS Committee membership or participation in a leadership position be revised. Currently, § 103.305(a) requires ''at least 5 years of experience related to maritime or port security operations.'' Four commenters suggested that membership not be limited only to security-related experience. One commenter recommended that the seven AMS Committee members ''must be selected from'' the seven areas listed in § 103.305.

We aligned § 103.305 with the requirements for the AMS Committee found in the Maritime Transportation Security Act of 2002 (MTSA), which specifically requires a minimum of 7 members with at least 5 years of practical experience in maritime security operations and provides that the members ''may be selected'' from the seven areas listed. We have, however, amended § 103.305 in order to clarify that, while 7 members of the AMS Committee must have at least 5 years of experience related to maritime or port security operations, the AMS Committee may be composed of more than 7 members. We are also adding labor to the list of areas from which AMS Committee members should be selected. These changes increase participation in the AMS Committee, which we believe will be beneficial to the operation of the AMS Committee.

One commenter recommended that AMS Committees consider information access ''up the chain of command'' for ''strong and viable seaport security.''

The COTP is the Federal Maritime Security Coordinator, and will be involved with the AMS Committee. The COTP is responsible for disseminating information to the port stakeholders and ''up the chain of command.'' Additionally, owners or operators of vessels and facilities subject to parts 104, 105, and 106 are required to report all suspicious activities and breaches of security to the National Response Center (NRC); other owners and operators are encouraged to do so. Finally, non-compliance with security plans and the reporting requirements in them must be reported to the Coast Guard.

One commenter asked how, in accordance with § 104.240(d), the COTP will communicate permission to a vessel to enter the port if the vessel cannot implement its Vessel Security Plan.

The COTP can use a number of means to communicate to a vessel permission or denial to enter the port, such as issuing a COTP order denying entry or establishing conditions upon which the vessel may enter the port. Presently, communications to a vessel occur before port entry regarding required construction, safety, and equipment regulations. These communications occur through agents by satellite phone, fax, email, cellular phone, or radio communications.

One commenter stated that, because vessel and facility owners or operators may be required under Federal law to obtain the services of security guards and armed guards, there should be minimum standards guiding the qualifications, certification, and performance of those guards. The commenter also suggested that the AMS Committee evaluate local armed security service providers and develop a list of qualified providers.

As we stated in the temporary interim rule (68 FR 39255) (part 101), we intend to work with State homeland security representatives to encourage the review of all standards related to armed personnel. While we have not required each AMS Committee to develop lists of qualified security personnel providers, each AMS Committee may undertake this task.

Subpart D—Area Maritime Security (AMS) Assessment

This subpart directs the AMS Committee to ensure development of a risk-based AMS Assessment.

We received four comments regarding the use of third party companies to conduct security assessments. Two commenters asked if we will provide a list of acceptable assessment companies because of the concern that the vulnerability assessment could ''fall into the wrong hands.'' One commenter requested that the regulations define ''appropriate skills'' that a third party must have in order to aid in the development of security assessments. One commenter stated that the person or company conducting the assessment might not be reliable.

We will not be providing a list of acceptable assessment companies, nor will we define ''appropriate skills.'' It is the responsibility of the vessel or facility owner or operator to vet companies that assist them in their security assessments. In the temporary interim rule (68 FR 39254), we stated, ''we reference ISPS Code, part B, paragraph 4.5, as a list of competencies all owners and operators should use to guide their decision on hiring a company to assist with meeting the regulations. We may provide further guidance on competencies for maritime security organizations, as necessary, but do not intend to list organizations, provide standards within the regulations, or certify organizations.'' We require security assessments to be protected from unauthorized disclosures and will enforce this requirement, including using the penalties provision under § 101.415.

One commenter stated that any third party participating in developing the AMS Assessment should sign non-disclosure or secrecy agreements regarding any classified, sensitive security, commercially sensitive, or proprietary information developed, collected, or otherwise accessed during the preparation of the AMS Assessment.

If the AMS Committee or the Coast Guard chooses to use third parties in developing the AMS Assessment or the AMS Plan, those third parties must possess the same level of clearance as the material they are helping to develop, collect, or otherwise access. As required by § 103.300(b)(6), the charter under which the AMS Committee operates will establish rules for handling and protecting classified and sensitive security information. We intend to address third parties signing non-disclosure or secrecy agreements to protect classified or sensitive security information in future guidance.

One commenter supported the development of a risk-based AMS Assessment but requested the addition of assessment requirements to specifically include: (1) Consideration of requiring Facility Security Plans and Vessel Security Plans for vessels that carry fewer than 150 passengers or facilities that serve these smaller operators, and (2) consideration of the public transit sector. The commenter stated that adding requirements to assess smaller operations would address a gap created because the current regulations exempt vessels and facilities that handle 150 passengers or fewer. Furthermore, the commenter stated that a critical look at the public transit sector (*e.g.*, ferry vessels) was needed because implementing certain security measures could severely hurt this industry and could cause a security inequity with other public transportation modes. The commenter further suggested that the public transit sector should be allowed to come forward with security recommendations to satisfy the AMS Plan.

We agree that both the consideration of small vessel and facility operations as well as public transit must be included in the AMS Assessment. Section 103.405 was developed to cover these topics but did not go into detail. We believe the details of the AMS Assessment are best embodied in guidance. We intend to provide additional guidance in a revision to NVIC 9–02 (Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports). We intend to update this guidance to incorporate several suggestions and address the consideration of security measures for vessels and facilities that are not directly regulated under parts 104 or 105 but, due to the specific nature of their port location or operation, may require additional security measures or requirements. Public transit issues and parity with other transportation modes is also a concern. The AMS Assessment is required to address transportation infrastructure, which includes all ferry operations, as well as train or other modes affecting the area maritime community.

One commenter stated that the AMS Assessment should include consideration of manufacturers and users of hazardous material.

Section 103.405 lists the elements that must be taken into consideration in developing the AMS Assessment. These elements are broadly defined and could include manufacturers and users of hazardous materials if they may be involved in a transportation security incident.

Four commenters requested that the Company and the Facility Security Officers be given access to the ''vulnerability assessment'' done by the COTP to facilitate the development of the Facility Security Plan and ensure that the Facility Security Plan does not conflict with the AMS Plan.

The AMS Assessments directed by the Coast Guard are broader in scope than the required Facility Security Assessments. The AMS Assessment is used in the development of the AMS Plan, and it is a collaborative effort between Federal, State, Indian Tribal, and local agencies as well as vessel and facility owners and other interested stakeholders. The AMS Assessments are sensitive security information. Access to these assessments, therefore, is limited under 49 CFR part 1520 to those persons with a legitimate need-to-know (*e.g.*, Facility Security Officers who need to align Facility Security Plans with the AMS Plan may be deemed to have need to know sensitive security information). In addition, potential conflicts between security plans and the AMS Plan will be identified during the Facility Security Plan approval process.

Subpart E—Area Maritime Security (AMS) Plan

This subpart concerns the elements of the AMS Plan, requirements on exercising the AMS Plan, and recordkeeping requirements.

One commenter supported the creation of an AMS Plan and believes it provides details of operational and physical measures that must be in place at all MARSEC Levels rather than blanket security rules that do not appropriately apply to the public transit sector (*e.g.*, ferry vessels).

We believe the AMS Plan is an excellent tool to coordinate and communicate security measures throughout the port community. The AMS Plan takes into account unique port operations and their criticality to the community and tailors security measures to effectively continue essential port operations as MARSEC Levels increase.

One commenter asked that we ensure the interoperability of the various plans required in parts 101 through 106, stating that we must have a coordinated approach to the implementation of national maritime security requirements.

We agree with the commenter and intend to take the interoperability of security plans into account as we review and approve security plans for vessels

and facilities and as we develop the National and AMS Plans.

One commenter stated that there should be a common template for AMS Plans for use at all Districts.

The regulations provide uniformity by requiring all AMS Plans to be submitted for review to the Coast Guard District Commander and for approval to the Coast Guard Area Commander.

Six commenters stated that part 105 should not apply to marinas that receive a small number of passenger vessels certificated to carry more than 150 passengers or to ''mixed-use or special-use facilities which might accept or provide dock space to a single vessel'' because the impact on local business in the facility could be substantial. Two commenters stated that private and public riverbanks should not be required to comply with part 105 because ''there is no one to complete a Declaration of Security with, and no way to secure the area, before the vessel arrives.'' Two commenters stated that facilities that are ''100 percent public access'' should not be required to comply with part 105 because these types of facilities are ''vitally important to the local economy, as well as to the host municipalities.'' This commenter also stated that vessels certificated to carry more than 150 passengers frequently embark guests at private, residential docks and small private marinas for special events such as weddings and anniversaries and may visit such a dock only once.

We agree that the applicability of part 105 to facilities that have minimal infrastructure but are capable of receiving passenger vessels is unclear. Therefore, in the final rule for part 101, we added a definition for a ''public access facility'' to mean a facility approved by the cognizant COTP with public access that is primarily used for purposes such as recreation or entertainment and not for receiving vessels subject to part 104. By definition, a public access facility has minimal infrastructure for servicing vessels subject to part 104 but may receive ferries and passenger vessels other than cruise ships, ferries certificated to carry vehicles, or passenger vessels subject to SOLAS. Minimal infrastructure would include, for example, bollards, docks, and ticket booths but would not include, for example, permanent structures that contain passenger waiting areas or concessions. We have not allowed public access facilities to be designated if they receive vessels such as cargo vessels because such cargo-handling operations require additional security measures that public access facilities would not have. We amended part 105 to exclude these public access facilities, subject to COTP approval, from the requirements of part 105. We believe this construct does not reduce security because the facility owner or operator or entity with operational control over these types of public access facilities still has obligations for security that will be detailed in the AMS Plan, based on the AMS Assessment. Additionally, the Vessel Security Plan must address security measures for using the public access facility. This exemption does not affect existing COTP authority to require the implementation of additional security measures to deal with specific security concerns. We have also amended § 103.505, to add public access facilities to the list of elements that must be addressed within the AMS Plan.

Two commenters asked if the COTP would allow private port facilities access to the completed AMS Assessment or Plan, stating that a port plan could potentially contradict a private Facility Security Plan. One commenter stated that the AMS Plan should be ''absolutely unequivocal about the lines of authority for preventative and response actions as well as law enforcement.''

The development of the AMS Plan is a collaborative effort between Federal, State, Indian Tribal, and local agencies as well as individual facility owners and any other interested stakeholders. AMS Plans contain sensitive security information, and the COTP must ensure it is protected in accordance with 49 CFR part 1520. The Coast Guard will resolve potential conflicts between an individual Facility Security Plan and the AMS Plan during the Facility Security Plan approval process, which will ensure proper planning for preventative and response actions. To clarify that the entire AMS Plan is not necessarily sensitive security information, we are amending § 103.500(b) to allow only those portions of the AMS Plan that contain sensitive security information to be marked as such. This will allow certain non-sensitive security information portions of the AMS Plan to be widely distributed to maximize its communication and coordination with port stakeholders.

Ten commenters addressed the disclosure of security plan information. One commenter advocated making security plans public. One commenter was concerned that plans will be disclosed under the Freedom of Information Act (FOIA). One commenter requested that mariners and other employees, whose normal working conditions are altered by a Vessel or Facility Security Plan, be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because some State laws require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter was particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of conflicting State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is generally exempt from disclosure under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

Information designated as sensitive security information is generally exempt under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public.

Two commenters stated that our regulations suggest that information designated as sensitive security information is exempt from FOIA. One commenter suggested that all

documentation submitted under this rule be done pursuant to the Homeland Security Act of 2002, to afford a more legally definite protection against disclosure.

''Sensitive security information'' is a designation mandated by regulations promulgated by TSA and may be found in 49 CFR part 1520. These regulations state that information designated as sensitive security information may not be shared with the general public. FOIA exempts from its mandatory release provisions those items that other laws forbid from public release. Thus, security assessments, security assessment reports, and security plans, which should be designated as sensitive security information, are all exempt from release under FOIA.

Four commenters urged us to conduct background checks on potential members of AMS Committees because the information contained in the AMS Plans might be ''secret.'' Two commenters urged us to designate security assessments, Vessel Security Plans, Facility Security Plans, and information contained in the AMS Plans as ''secret,'' and require secret clearance for AMS Committee members.

We do not believe that a security designation above sensitive security information is needed for this material. However, § 103.300(b)(6) requires AMS Committee charters to include rules for handling and processing classified material. Access to the AMS Plan will be limited to those on the AMS Committee who have agreed to protect the material in a manner appropriate to its security sensitivity and have a need to know the material. Guidance on sensitive security information and its use will be issued to assist AMS Committee members, consistent with 49 CFR part 1520. For material that is designated at a level higher than sensitive security information, the Coast Guard will screen AMS Committee members for appropriate clearances and take precautions appropriate to the material's sensitivity. Individuals and Federal, State, Indian Tribal, and local agencies outside those with transportation oversight authority will not be allowed to view plans or assessments of vessels and facilities unless circumstances provide a need to view them. As stated in the ''Vessel Security'' temporary interim rule (68 FR 39297), certain portions of each Vessel Security Plan and Vessel Security Assessment must be made accessible to authorities; however, those portions not required to be disclosed are protected with the sensitive security information designation and need-to-know criteria. Owners and operators of vessels and facilities may also request a determination of a higher designation than sensitive security information for their plans. The Commandant or the COTP, whoever is responsible for reviewing the security plan, will retain the designation authority. In all cases, the material, if retained by a Federal agency, must be safeguarded to the appropriate designation.

We received 28 comments regarding communication of changes in the MARSEC Levels. Most commenters were concerned about the Coast Guard's capability to communicate timely changes in MARSEC Levels to facilities and vessels. Some stressed the importance of MARSEC Level information reaching each port area in the COTP's zone and the entire maritime industry. Some stated that local Broadcast Notice to Mariners and MARSEC Directives are flawed methods of communication and stated that the only acceptable ways to communicate changes in MARSEC Levels, from a timing standpoint, are via email, phone, or fax as established by each COTP.

MARSEC Level changes are generally issued at the Commandant level and each Marine Safety Office (MSO) will be able to disseminate them to vessel or facility owners and operators, or their designees, by various ways. Communication of MARSEC Levels will be done in the most expeditious means available, given the characteristics of the port and its operations. These means will be outlined in the AMS Plan and exercised to ensure vessel and facility owners and operators, or their designees, are able to quickly communicate with us and vice-versa. Because MARSEC Directives will not be as expeditiously communicated as other COTP Orders and are not meant to communicate changes in MARSEC Levels, we have amended § 101.300 to remove the reference to MARSEC Directives.

We received four comments on the subject of AMS Plan exercises. One commenter agreed with our inclusion of tabletop exercises as a cost-effective means of exercising the security plan. Two commenters supported a maritime security field training exercise in each area covered by an AMS Plan but requested that the frequency be every 3 years rather than annually. These commenters stated that the annual requirement for an AMS Plan exercise placed an undue burden on the maritime sector because it is already conducting vessel and facility exercises. One commenter stated that the Coast Guard must be aware that the AMS exercise requirements may be overly burdensome to some vessels, as they could potentially be required to participate in several AMS exercises per year.

We believe that exercising the AMS Plan annually is essential to ensure that it can be effectively implemented, stakeholders with security responsibilities are proficient in their responsibilities, and any deficiencies in the AMS Plan can be identified and corrected in a timely manner. In addition, the AMS Plan exercise frequency must also meet the international requirement for an annual exercise found in the ISPS Code, part B, regulation 18.6. However, we realize that an AMS Plan annual exercise requirement is in addition to the annual exercise requirements for Vessel and Facility Security Plans. We also recognize that many of the entities affected by § 103.515 are also subject to, or regularly participate in, other emergency response or crisis management exercises. We are mindful of the potential burdens imposed on the regulated community, and other port stakeholders by the number of safety, security and response exercises required by various regulations, and believe that the objectives for AMS Plan exercises can often be met through effective consolidation of exercises. Further, we acknowledge that several vessels may be offered the opportunity to participate in several AMS Plan exercises per year. Participation in these AMS Plan exercises will be subject to the specific details of the AMS Plan as developed by the AMS Committee on which those vessel owners or operators may participate. While vessel owners and operators will be encouraged to participate in AMS Plan exercises and may be requested to deviate from normal operations to minimize interference with the AMS Plan exercise, they will not be required to participate. In addition, we anticipate that COTPs will give ample notice of AMS Plan exercises to allow vessel owners and operators to plan appropriately and to minimize the impact on the maritime community.

Section 103.515(c) allows the cognizant District Commander to authorize AMS Plan exercise credit for actual increases in the MARSEC Level and implementation of security measures during periods of critical port operations or special marine events. However, upon further review, we have decided to revise § 103.515(c) to provide an additional option to participate in another port exercise that contains elements of the AMS Plan but is not a stand-alone AMS Plan exercise. This annual exercise credit is only given if approved by the Area Commander to

ensure that the appropriate elements of the AMS Plan are implemented. We have changed the approval level to the Area Commander, because the Area Commander is the approval authority for the AMS Plan, not the District Commander. However, we have kept the initial review at the District Commander level in order to highlight any regional resource issues. Once we obtain sufficient experience with AMS Plan implementation, we will review the annual requirement and, if warranted, may consider revising the exercise frequency. However, to remain in compliance with our international obligations, should we deem a change to this annual frequency to be appropriate in the future, we must propose the change internationally.

Additional Changes

In addition, the part heading in this part has been amended to align with all the part headings within this subchapter. We have also corrected the Table of Contents for the entry for § 103.410, which was missing the word ''Assessment.''

Regulatory Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final assessment is available in the docket as indicated under **ADDRESSES.** We did not receive specific comments on the regulatory assessment for part 103. A discussion of general comments on the regulatory assessment for subchapter H can be found in the preamble of the final rule for part 101, under ''Regulatory Assessment.''

Cost Assessment

This rule will affect stakeholders in 47 COTP zones containing 361 ports. The regulatory assessment and analysis documentation (*see* USCG–2003–14733) details estimated costs to public and private stakeholders and does not include costs to the Coast Guard. Because the changes in this final rule do not affect the original cost estimates presented in the temporary interim rule (68 FR 39287) (part 103), the costs remain unchanged.

The total cost estimate of the rule, as it pertains to area maritime security, is present value $477 million (2003–2012, 7 percent discount rate). The initial cost of the startup period (June 2003-December 2003) for establishing AMS Committees and creating AMS Plans is estimated to be $120 million (non-discounted) for all areas. Following the startup period, the first year of implementation (2004), consisting of monthly AMS Committee meetings and AMS Plan exercises and drills for all areas, is estimated to be $106 million (non-discounted). After the first year of implementation, the annual cost of quarterly AMS Committee meetings and AMS Plan exercises and drills for all areas is estimated to be $46 million (non-discounted). The startup period cost associated with creating AMS Committees and AMS Plans for each area is the primary cost driver of the rule. Both the startup and implementation year period (2003–2004) combined is nearly half of the total 10-year present value cost estimate, making initial development, planning, and testing the primary costs of Area Maritime Security.

This rule will require all COTPs to establish security committees, plans, training drills, and exercises for their areas, with the participation of port stakeholders in their areas. The above costs to stakeholders will be paperwork, travel, and communication costs associated with participation in AMS Plan implementation.

We estimate 1,203,200 hours of paperwork and other associated planning activities during 2003, the initial period of security meetings and development. In 2004, the first year of implementation, we estimate the value will fall slightly to 1,090,400 hours of paperwork and other related information and communication activities related to monthly AMS Committee meetings. In subsequent years, we estimate the hours will fall to 488,800 hours annually associated with AMS Committee meetings, AMS Plan revisions, and information exercises and drills.

Benefit Assessment

This final rule is one of six final rules that implement national maritime security initiatives concerning general provisions, Area Maritime Security, vessels, facilities, Outer Continental Shelf (OCS) facilities, and the Automatic Identification System (AIS). The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to ''Applicability of National Maritime Security Initiatives'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a ''family'' of rules that will reinforce and support one another in their implementation. We have ensured, however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to ''Benefit Assessment'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39274) (part 101).

We determined annual risk points reduced for each of the six final rules using the N–RAT. The benefits are apportioned among the Vessel, Facility, OCS Facility, AMS, and AIS requirements. As shown in Table 1, the implementation of AMS security for the affected population reduces 135,202 risk points annually through 2012. The benefits attributable for part 101, General Provisions, were not considered separately since it is an overarching section for all the parts.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Vessels	778,633	3,385	3,385	3,385	1,317

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES—Continued

Maritime entity	Annual risk points reduced by rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Facilities	2,025	469,686	.....	2,025	.....
OCS facilities	41	.....	9,903	.....	.....
Port Areas	587	587	.....	129,792	105
Total	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented the cost effectiveness, or dollars per risk point reduced, in two ways: First, we compared the first-year cost and first-year benefit because the first-year cost is the highest in our assessment as companies develop security plans and purchase equipment. Second, we compared the 10-year present value cost to the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES.

Item	Final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS *
First-Year Cost (millions)	$218	$1,125	$3	$120	$30
First-Year Benefit	781,285	473,659	13,288	135,202	1,422
First-Year Cost Effectiveness ($/Risk Point Reduced)	279	2,375	205	890	21,224
10-Year Present Value Cost (millions)	1,368	5,399	37	477	26
10-Year Present Value Benefit	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year Present Value Cost Effectiveness ($/Risk Point Reduced)	233	1,517	368	469	2,427

* Cost less monetized safety benefit.

Small Entities

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

The stakeholders affected by this rule include a variety of businesses and governments. The COTP will designate approximately 200 stakeholders, per maritime area, to engage in security planning, meetings, and drills. Full participation by these stakeholders will be voluntary. We estimate the first-year cost, per stakeholder, to be $12,800 (non-discounted). In subsequent years, the annual cost, per stakeholder (full participation in this rule), falls to $4,940 (non-discounted).

The results from our assessment (copy available in the docket) suggest that the impact of this rule is not significant for port and maritime area authorities, owners, or operators because of the low average annual cost per stakeholder and the voluntary nature of participating in this rule.

We estimated the majority of small entities have a less than 3 percent impact on revenue if they choose to fully participate in this rule. We anticipate the few remaining small entities that may have a greater than 3 percent impact on annual revenue will either opt out (not participate) or partially participate in the rule to the extent that the impact on revenue is not a burden.

There are other stakeholders affected by this rule in addition to port authorities, owners, and operators. The stakeholders could be any entity that the COTP invites to partially or fully participate. We anticipate the impact on other possible small entity stakeholders to be minimal because of the low average annual cost per stakeholder and the voluntary nature of participating in this rule.

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

We did not receive comments regarding small entities. Additional information on small entity impacts is available in the ''Small Entities'' section of the preamble for each final rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be required to take in order to comply with each respective final rule. We have not created Compliance Guides for part 101 or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The final rules are covered by two existing OMB-approved collections—1625–0100 [formerly 2115–0557] and 1625–0077 [formerly 2115–0622].

We did not receive comments regarding collection of information. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

Federalism

Executive Order 13132 requires the Coast Guard to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, the Coast Guard may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications and a substantial direct effect on the States. This final rule requires those States that own or operate vessels or facilities that may be involved in a transportation security incident to conduct security assessments of their vessels and facilities and to develop security plans for their protection. These plans must contain measures that will be implemented at each of the three MARSEC Levels and must be reviewed and approved by the Coast Guard.

Additionally, the Coast Guard has reviewed the MTSA with a view to whether we may construe it as non-preemptive of State authority over the same subject matter. We have determined that it would be inconsistent with the federalism principles stated in the Executive Order to construe the MTSA as not preempting State regulations that conflict with the regulations in this final rule. This is because owners or operators of facilities and vessels-that are subject to the requirements for conducting security assessments, planning to secure their facilities and vessels against threats revealed by those assessments, and complying with the standards, both performance and specific construction, design, equipment, and operating requirements—must have one uniform, national standard that they must meet. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they moved from State to State. Therefore, we believe that the federalism principles enumerated by the Supreme Court in *U.S.* v. *Locke,* 529 U.S. 89 (2000) regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulation and control of vessels for security purposes. But, the same considerations apply to facilities, at least insofar as a State law or regulation applicable to the same subject for the purpose of protecting the security of the facility would conflict with a Federal regulation; in other words, it would either actually conflict or would frustrate an overriding Federal need for uniformity.

Finally, it is important to note that the regulations implemented by this final rule bear on national and international commerce where there is no constitutional presumption of concurrent State regulation. Many aspects of these regulations are based on the U.S. international treaty obligations regarding vessel and port facility security contained in SOLAS and the complementary ISPS Code. These international obligations reinforce the need for uniformity regarding maritime commerce.

Notwithstanding the foregoing preemption determinations and findings, the Coast Guard has consulted extensively with appropriate State officials, as well as private stakeholders during the development of this final rule. For these final rules, we met with the National Conference of State Legislatures (NCSL) Taskforce on Protecting Democracy on July 21, 2003, and presented briefings on the temporary interim rules to the NCSL's Transportation Committee on July 23, 2003. We also briefed several hundred State legislators at the American Legislative Exchange Council on August 1, 2003. We held a public meeting on July 23, 2003, with invitation letters to all State homeland security representatives. A few State representatives attended this meeting and submitted comments to a public docket prior to the close of the comment period. The State comments to the docket focused on a wide range of concerns including consistency with international requirements and the protection of sensitive security information.

Other concerns raised by the NCSL at the briefings mentioned above included questions on how the Coast Guard will enforce security standards on foreign flag vessels and how multinational crewmember credentials will be checked.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, Congress explicitly found that ''it is in the best interests of the U.S. to implement new international instruments that establish'' a maritime security system. We agree and will exercise Port State Control to ensure that foreign vessels have approved plans and have implemented adequate security standards on which these rules are based. If vessels do not meet our security requirements, the Coast Guard may prevent those vessels from entering the U.S. or take other necessary measures that may result in vessel delays or detentions. The Coast Guard will not hesitate to exercise this authority in appropriate cases. We discuss the ongoing initiatives of ILO and the requirements under the MTSA to develop seafarers' identification criteria in the temporary interim rule titled ''Implementation of National maritime Security Initiatives''(68 FR 39264) (part 101). We will continue to

work with other agencies to coordinate seafarer access and credentialing issues. These final rules will also ensure that vessel and facility owners and operators take an active role in deterring unauthorized access.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This final rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)). We did not receive comments regarding the Unfunded Mandates Reform Act.

Taking of Private Property

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

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this final rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive comments regarding the protection of children.

Indian Tribal Governments

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

Energy Effects

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

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security. We did not receive comments regarding energy effects.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a) and (34)(c) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule concerns security assessments and the establishment of security committees and coordinators that will contribute to a higher level of marine safety and security for U.S. ports. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION**.

This final rule will not significantly impact the coastal zone. Further, the execution of this final rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

List of Subjects in 33 CFR Part 103

Facilities, Harbors, Maritime security, Ports, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ Accordingly, the interim rule adding 33 CFR part 103, that was published at 68 FR 39284 on July 1, 2003, and amended at 68 FR 41914 on July 16, 2003, is adopted as a final rule with the following changes:

PART 103—MARITIME SECURITY: AREA MARITIME SECURITY

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70102, 70103, 70104, 70112; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise the heading to part 103 to read as shown above.

■ 3. In the Table of Contents, revise the entry for § 103.410 to read as follows:

§ 103.410 Persons involved in the Area Maritime Security (AMS) Assessment.

■ 4. In § 103.305—

■ a. Revise paragraph (a) introductory text and paragraph (a)(5), to read as set out below;

■ b. Redesignate paragraph (b) as paragraph (c); and

■ c. Add new paragraph (b) to read as follows:

§ 103.305 Composition of an Area Maritime Security (AMS) Committee.

(a) An AMS Committee will be composed of not less than seven members having an interest in the security of the area and who may be selected from—

* * * * *

(5) Maritime industry, including labor;

* * * * *

(b) At least seven of the members must each have 5 or more years of experience related to maritime or port security operations.

* * * * *

§ 103.500 [Amended]

■ 5. In § 103.500(b), remove the words ''AMS Plans are sensitive security information and must be'' and add, in their place, the words ''Portions of the AMS Plan may contain sensitive security information, and those portions must be marked as such and''.

■ 6. In § 103.505—

■ a. Redesignate paragraphs (s), (t), and (u) as paragraphs (t), (u), and (v), respectively;

■ b. In newly redesignated paragraph (u), remove the word ''and'';

■ c. In newly redesignated paragraph (v), remove the period and add, in its place, the word ''; and''; and

■ d. Add new paragraphs (s) and (w) to read as follows:

§ 103.505 Elements of the Area Maritime Security (AMS) Plan.

* * * * *

(s) The jurisdiction of Federal, State, Indian Tribal, and local government agencies and law enforcement entities over area security related matters;

* * * * *

(w) Identification of any facility otherwise subject to part 105 of this subchapter that the COTP has designated as a public access facility within the area, the security measures that must be implemented at the various MARSEC Levels, and who is responsible for implementing those measures.

■ 7. In § 103.515—

■ a. In paragraph (a), after the word ''conduct'', add the words ''or participate in''; and

■ b. Revise paragraph (c) to read as follows:

§ 103.515 Exercises.

* * * * *

(c) Upon review by the cognizant District Commander, and approval by the cognizant Area Commander, the requirements of this section may be satisfied by—

(1) Participation of the COTP and appropriate AMS Committee members or other appropriate port stakeholders in an emergency response or crisis management exercise conducted by another governmental agency or private sector entity, provided that the exercise addresses components of the AMS Plan;

(2) An actual increase in MARSEC Level; or

(3) Implementation of enhanced security measures enumerated in the AMS Plan during periods of critical port operations or special marine events.

Dated: October 8, 2003.

Thomas H. Collins,

Admiral, Coast Guard, Commandant.

[FR Doc. 03–26346 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 104, 160, and 165

46 CFR Parts 2, 31, 71, 91, 115, 126, and 176

[USCG–2003–14749]

RIN 1625–AA46

Vessel Security

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, the temporary interim rule published on July 1, 2003, that provides security measures for certain vessels calling on U.S. ports. It also requires the owners or operators of vessels to designate security officers for vessels, develop security plans based on security assessments and surveys, implement security measures specific to the vessel's operation, and comply with Maritime Security Levels. This rule is one in a series of final rules on maritime security in today's **Federal Register**. To best understand this rule, first read the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in today's **Federal Register**.

DATES: This final rule is effective November 19, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14749 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Lieutenant Commander Darnell Baldinelli (G–MPS), U.S. Coast Guard by telephone 202–267–4148 or by electronic mail *dbaldinelli@comdt.uscg.mil*. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled ''Vessel Security'' in the **Federal Register** (68 FR 39292). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41915).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some of which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' that contained comments in that temporary interim rule, plus comments on the ''Vessel Security'' temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same letter to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider comments received after the period for receipt of comments closed on July 31, 2003.

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the ''Discussion of Comments and Changes'' section of this preamble.

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. To view a copy of the complete regulatory text with the changes shown in this final rule, *see http://www.uscg.mil/hq/g-m/mp/index.htm.*

Background and Purpose

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the ''Background and Purpose'' section in the preamble to the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in this issue of the **Federal Register**.

Impact on Existing Domestic Requirements

33 CFR part 120, Security of Vessels, currently exists but applies only to cruise ships. Until July 2004, 33 CFR part 120 will remain in effect. Vessels that were required to comply with part 120 must now also meet the requirements of this part, including § 104.295, Additional requirements—cruise ships. The requirements in § 104.295 generally capture the existing requirements in part 120 that are specific for cruise ships and capture additional detail to the requirements of

the International Convention for the Safety of Life at Sea, 1974, (SOLAS) Chapter XI–2 and the International Ship and Port Facility Security Code (ISPS Code).

Discussion of Comments and Changes

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. For example, discussions of comments that requested clarification or changes to the Declaration of Security procedures are duplicated in the preambles to parts 104, 105, and 106. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG–2003–14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

Subpart A—General

This subpart contains provisions concerning applicability, waivers, and other subjects of a general nature applicable to part 104.

One commenter asked the Coast Guard to clarify the difference between ''vessel-to-vessel activity,'' as defined in § 101.105, and ''vessel-to-vessel interface,'' as used in part 104.

We find that the terms ''vessel-to-vessel activity'' and ''vessel-to-vessel interface'' are comparable and have chosen to use the term ''vessel-to-vessel activity'' to align these regulations with the ISPS Code. We have amended the definition of ''Declaration of Security'' in § 101.105 as well as §§ 104.255 and 104.300 to use the term ''vessel-to-vessel activity'' in place of ''vessel-to-vessel interface,'' for consistency.

We received 11 comments relating to the use of the terms ''vessel-to-facility interface,'' ''vessel-to-port interface,'' and ''vessel-to-vessel activity.'' Seven commenters requested that the Coast Guard be consistent in its use of ''vessel-to-vessel interface'' in § 101.105 and use the word ''cargo'' instead of the phrase ''goods or provisions.'' One commenter asked us to modify the definition of a ''vessel-to-vessel activity'' to include the transfer of a container to or from a manned or unmanned vessel. One commenter noted that it should be made clear that the term ''vessel-to-facility interface'' refers to when the vessel is at the facility or arriving at the facility.

We partially agree with the commenters. We have amended the definitions for ''vessel-to-facility interface,'' ''vessel-to-port interface,'' and ''vessel-to-vessel activity'' in § 101.105 to use the words ''cargo'' and ''vessel stores'' instead of the word ''goods'' to be clearer for the intended activities. The term ''vessel-to-facility interface'' clearly states that the vessel is either at, or arriving at, the facility, and therefore, we did not amend the definition further.

Two commenters asked that the Coast Guard enumerate the specific categories and thresholds of vessels that are required to comply with the regulations. One commenter stated that it would be helpful if the Coast Guard provided a chart showing what types of vessels are and are not required to comply.

We understand that the applicability of part 104 presumes that a vessel owner or operator is familiar with existing laws and regulations for vessels. We believe this cross-reference to existing law and regulation is the best way to ensure that § 104.105 is clear; therefore, we have not amended the applicability section to include a chart. We have created Small Business Compliance Guides, which may be useful to owners and operators trying to determine the applicability of part 104. These Guides may be found at the locations listed in the ''Assistance for Small Entities'' section of this final rule.

Two commenters requested that § 104.105(b) regarding applicability of parts 101 through 103 for vessels not covered by part 104 be deleted, stating that this language has the effect of making all vessels subject to part 104.

We do not believe that § 104.105(b) has the effect of making all vessels subject to part 104. Paragraph (b) is strictly informational and refers the owner or operator of a vessel not subject to part 104 to parts 101 and 103, to which the owner or operator is subject. A vessel is subject to part 104 only if it is listed in § 104.105(a).

Eleven commenters requested various amendments to § 104.105 regarding specific applicability requirements for vessels, stating that there is no ''general'' applicability of SOLAS, and that Chapter XI–2 should be referenced to narrow the applicability. Two commenters requested that references to foreign or U.S. owned non-self propelled vessels (barges) be included to clarify that applicability is limited to only those barges that carry hazardous or dangerous cargoes.

We agree that the general reference to SOLAS is broad and could encompass more vessels than the applicability in SOLAS, Chapter XI–2. We have amended the reference to the applicability of SOLAS, Chapter XI because subchapter H also addresses those requirements in SOLAS, Chapter XI–1 as well as Chapter XI–2. We also amended § 104.105(a) to clarify that not all non-self-propelled vessels (barges) subject to 33 CFR subchapter I must comply with part 104. We have noted a similar issue with the applicability of part 104 to passenger vessels covered under 46 CFR subchapter K that have overnight accommodations for more than 49 passengers but are not certificated to carry more than 150 passengers. The intent of the applicability for part 104 was not to include these vessels; therefore, we have amended § 104.105(a) to clarify that vessels covered under 46 CFR subchapter K must meet the requirements only if they are certificated to carry more than 150 passengers. In § 104.105(a)(7), we added a clarification that part 104 only applies to vessels on international voyages that carry more than 12 passengers, including at least one passenger-for-hire. We did not include references to foreign or U.S. ownership in all of the applicability paragraphs because it is duplicative to the existing language.

Five commenters recommended changes to the definitions of ''facility'' and ''OCS facility'' in § 101.105 in order to clarify the applicability of parts 104, 105, and 106 to Mobile Offshore Drilling Units (MODUs). Two commenters suggested adding language to the facility definition to specifically include MODUs that are not regulated under part 104, consistent with the definition of OCS facility. Another commenter stated that if we change the definition to include MODUs not regulated under part 104, then we also should add an explicit exemption for these MODUs from part 105. Three commenters suggested deleting the words ''fixed or floating'' and the words ''including MODUs not subject to part 104 of this subchapter'' in § 106.105 and adding a paragraph to read ''the requirements of this part do not apply to a vessel subject to part 104 of this subchapter.''

With regard to the definition of ''facility'' and the suggested additional language regarding MODUs, the definition clearly incorporates MODUs that are not covered under part 104 and MODUs are sufficiently covered under parts 101 through 103 and 106. Therefore, we are not amending our definition of facility nor incorporating the suggested explicit exemption from part 105 because these MODUs are excluded. We have, however, amended

the applicability section of part 104 (§ 104.105) so that foreign flag, non-self propelled MODUs that meet the threshold characteristics set for OCS facilities are regulated by 33 CFR part 106, rather than 33 CFR part 104. We have done so because MODUs act and function more like OCS facilities, have limited interface activities with foreign and U.S. ports, and their personnel undergo a higher level of scrutiny to obtain visas to work on the Outer Continental Shelf. These amendments to § 104.105 required us to add a definition for ''cargo vessel'' in § 101.105. With these changes, we believe the existing definitions of ''facility'' and ''OCS facility'' in § 101.105 are sufficient to conclusively identify those entities that are subject to parts 104, 105, and 106. In addition, the definition of ''OCS facility,'' as written, ensures that these entities will be subject to relevant elements of an OCS Area Maritime Security (AMS) Plan. We believe the language in § 106.105, read in concert with the amended § 104.105(a)(1), and the existing definitions in part 101, is sufficient to preclude MODUs that are in compliance with part 104 from being subject to part 106.

Two commenters stated that our definition of ''international voyage'' includes voyages made by vessels that solely navigate the Great Lakes and St. Lawrence River. The commenter contended that SOLAS specifically exempts vessels that navigate in this area from all the requirements of SOLAS.

We are aware that vessels on the Great Lakes and St. Lawrence Seaway, which are otherwise exempted from SOLAS, are required to comply with our regulations. We have amended the definition of ''international voyage'' in § 101.105 to make this clear. We do not believe that we can require lesser security measures for certain geographic areas, such as the Great Lakes and the St. Lawrence Seaway, and still maintain comparable levels of security throughout the maritime domain. In addition, while SOLAS does not typically apply to the Great Lakes and St. Lawrence Seaway, it allows contracting governments to determine appropriate applicability for their national security. For the U.S., the Maritime Transportation Security Act of 2002 (MTSA) does not exempt geographic areas from maritime security requirements. If vessel owners or operators believe that any vessel security requirements are unnecessary due to their operating environment, they may apply for a waiver under the procedures allowed in § 104.130. Additionally, vessel owners or operators may submit for approval an Alternative Security Program to apply to vessels that operate solely on the Great Lakes and St. Lawrence Seaway.

One commenter asked whether Canadian commercial vessels, greater than 100 gross register tons, operating solely on the Great Lakes will be required to submit their plans to the Coast Guard for approval.

Under § 104.105, all foreign vessels not carrying an approved International Ship Security Certificate (ISSC) intending to enter a port or place subject to jurisdiction of the U.S. are required to submit to the Coast Guard a Vessel Security Plan prepared in response to the Vessel Security Assessment, unless they implement an approved Alternative Security Program. This includes Canadian commercial vessels greater than 100 gross register tons, operating solely on the Great Lakes and calling on U.S ports. We have amended § 104.105 to improve its clarity.

One commenter asked who is responsible for compliance with the security measures in the case of a short-term, bareboat charter in which the vessel has been leased for a period of time.

The regulations require the owner or operator of a vessel to submit a Vessel Security Plan. A true bareboat charterer, meeting the definition of ''demise charterer'' in 46 CFR 169.107, would be the owner or operator of the vessel for the purposes of this subchapter, and therefore, would be responsible for the Vessel Security Plan. If the vessel has other, independent operators, then each operator is required to submit a Vessel Security Plan unless the owner submits a plan that encompasses the operations of each operator. The submission of the security plan should be coordinated between the owner and the independent operators. The Coast Guard will take into account issues concerning the individual responsibilities of the operators and the owners when reviewing the security plan.

Two commenters suggested amending the regulatory threshold for passenger vessels. One commenter recommended that passenger vessels inspected under subchapter K and facilities that service subchapter K vessels, be required to comply with the security requirements only when the vessels have more than 149 passengers aboard. The commenter also stated that it is unreasonable for a subchapter K vessel that operates most of the time with fewer than 150 passengers to comply with the same requirements as a vessel that routinely operates with certificated passengers (*e.g.*, 225 passengers). One commenter suggested that the number of passengers be increased from 150 to 500 or, alternatively, that an exemption be added for those with fewer than 500 passengers.

We disagree with the idea of requiring security based solely on actual passenger count, rather than passenger certification level. It is imperative to maritime security that consistent security measures be in place to reduce the risk of a transportation security incident. For passenger vessels, and the facilities that serve passenger vessels, this threshold is the certification level of a passenger vessel rather than its operating level. Lowering security requirements for passenger vessels when they are not carrying their certificated passenger count allows for inconsistent and inadequate implementation of security measures, which can potentially increase risk. Moreover, owners and operators certificate their vessels at passenger thresholds and can re-certificate their vessels to reflect their business practices.

Two commenters urged the Coast Guard to exclude small passenger vessels subject to SOLAS that are also subject to 46 CFR subchapter T from these final rules, stating that our risk assessment for these vessels does not justify the regulatory requirements that apply to larger passenger vessels, and that the Coast Guard exempts vessels subject to subchapter T from some SOLAS provisions due to their size and small passenger capacity.

Our risk assessment showed that vessels making international voyages, including those subject to 46 CFR subchapter T, may be involved in a transportation security incident. While we have been able to grant waivers and equivalencies for some SOLAS safety-related requirements to some small passenger vessels on the basis of their size, passenger capacity, and where they operate, we believe that all vessels on international voyages should be subject to part 104 because of the higher security risks these vessels pose.

We received 14 comments on the applicability for small passenger vessels. Seven commenters supported our decision to treat small passenger vessels in a manner different than large passenger vessels, by not directly regulating small passenger vessels under part 104. Three commenters requested an exemption to the regulations for all uninspected small passenger vessels operating under 46 CFR subchapter C and all inspected small passenger vessels operating domestically under 46 CFR subchapter T. The commenters stated that the vague requirements and references in the regulations make it

difficult for marine charter firms to determine how they must comply with the new regulations. One commenter asked for clarification on whether small passenger vessels under 46 CFR subchapter T were covered by 33 CFR part 104, stating that these vessels should not be included in the final rules. We received two comments specifically requesting that charterboat vessels less than 100 feet or less than 100 gross tons or that carry fewer than 150 passengers be exempt. The commenters also asked if a vessel were certificated, that an endorsement be made on the vessel's certificate of inspection to reflect the exemption. One commenter stated that the regulations should specify if commercial yachts greater than 100 gross register tons are included.

Small passenger vessels in commercial service regulated under 46 CFR subchapter T and uninspected passenger vessels regulated under 46 CFR subchapter C are not directly regulated in part 104, other than those vessels on international voyages. Therefore, these vessels do not require a specific waiver, exemption, or endorsement. These vessels will be covered, however, in Area Maritime Security (AMS) Assessments and Plans under part 103. Owners, operators, and others associated with these vessels, including charterers, are encouraged to participate—consistent with § 103.300(b) concerning the AMS Committee charter—in the development of the AMS Plan.

We received 64 comments concerned with the application of these security measures to ferries. The commenters did not want airport-like screening measures implemented on ferries, stating that such measures would cause travel delays, frustrating the mass transit aspect of ferry service. The commenters also stated that the security requirements will impose significant costs to the ferry owners, operators, and passengers.

These regulations do not mandate airport-like security measures for ferries; however, ferry owners or operators may have to heighten their existing security measures to ensure that our ports are secure. Ferry owners and operators can implement more stringent screening or access measures, but they can also include existing security measures in the required security plan. These measures will be fully reviewed and considered by the Coast Guard to ensure that they cover all aspects of security for periods of normal and reduced operations.

We understand that ferries often function as mass transit and we have included special provisions for them. Even with these provisions, our cost analysis indicated that compliance with these final rules imposes significant costs to ferry owners and operators. To address this concern, the Department of Homeland Security (DHS) has developed a grant program to provide funding for security upgrades. Ferry terminal owners and operators can apply for these grants.

Nine commenters disagreed with the applicability criteria for towing vessels and barges, manned or unmanned, in the security requirements. Three commenters disagreed with including all towing vessels over 8 meters in length that tow hazardous barges. The commenters stated that security requirements are an undue burden on the harbor industry with little increase in real security. The third commenter recommended that we exempt barges over 10,000 barrels carrying grade D or lower products and towing vessels less than 2,000 horsepower operating exclusively in a harbor. This commenter stated that his vessels do not have the exposure of rotating crews and do not travel out of the port. A fourth commenter said that many towing vessels, not otherwise subject to these regulations, would be included just because they carry ammonium nitrate and no other Certain Dangerous Cargo (CDC) listed under 33 CFR 160.204.

We developed the vessel security requirements to address risks posed by those towing vessels engaged in the transportation of hazardous and dangerous cargoes. These towing vessels and their barges may be involved in a transportation security incident. We believe our focused approach to regulating towing vessels that transport barges with CDC and barges subject to 46 CFR subchapter D or O limits the burden on the towing industry, while increasing maritime security. Even in the case of limited operations, some cargoes are so dangerous that in order to minimize risk, we must regulate vessels carrying those cargoes. It should be noted that when defining what constitutes a CDC, we referenced § 160.204 to ensure consistency in Title 33. We are constantly reviewing and, when necessary, revising the CDC list based on additional threat and technological information. Changes to § 160.204 would affect the regulations in 33 CFR subchapter H because any changes to the CDC list would also affect the applicability of subchapter H. Any such changes would be the subject of a future rulemaking.

Three commenters stated that the Coast Guard needs to describe how it intends to apply these regulations to fleeting and towing operations. The commenters asked how these regulations should be applied to a towing vessel that provides emergency assistance to a regulated barge. The commenters also asked that the Coast Guard describe how it intends to apply the regulations to towing vessels that do not tow regulated cargoes but assist other vessels through locks or narrow bridges. One commenter said that the Declaration of Security provisions in § 104.255(b)(2) should not apply to towing vessels that are providing such assistance.

We have clarified the applicability of part 104 so that some towing vessels, such as assist tugs, assist boats, helper boats, bow boats, harbor tugs, ship-docking tugs, and harbor boats, are not subject to the part because either the primary towing vessel or the facility will be subject to the regulations and will take such assist vessels into account in their security plan. We anticipate that these vessels will engage in operations such as docking, undocking, maneuvering, transiting bridges, transiting locks, pulling cuts through a lock, or assisting in an emergency such as a breakaway barge. This exemption is similar to those used in 46 CFR part 27. Owners or operators of towing vessels not directly regulated under part 104 are covered under parts 101 through 103 and, although there are no specific security measures for assistance towing vessels in these parts, the AMS Plan may call for measures that the assistance towing vessels must follow, or the COTP may require security measures to address specific security concerns. Nothing in these regulations alters any duty that a vessel may have to render assistance to those in distress.

One commenter recommended exempting barges carrying non-hazardous oilfield waste from part 104, stating that they pose little or no security risk and should not be subject to the Vessel Security Plan requirements.

Under § 104.105(a)(8), part 104 applies to all barges subject to 46 CFR subchapters D or O, regardless of their specific cargo. In our risk assessment, we found that vessels subject to subchapter D, including barges carrying non-hazardous oilfield waste, may be involved in a transportation security incident.

Two commenters asked for clarification on which security regulations would apply for self-propelled and non-self-propelled dredges.

If a dredge meets any of the specifications in § 104.105(a), then the

dredge is regulated under part 104. For example, if a dredge's operations include towing a tank barge alongside for bunkers, the dredge must meet the requirements in part 104. If a dredge does not meet any of the specifications in § 104.105(a), then the dredge is covered by the requirements of parts 101 through 103 and, although there are no specific security measures for dredges in these parts, the AMS Plan may call for measures that the dredge must follow, or the COTP may require security measures to address specific security concerns.

Two commenters requested that we broaden the applicability of our vessel security regulations. One commenter stated that the applicability of our vessel security regulations should be broadened to include fishing, recreational, and other vessels less than 100 gross tons. One commenter stated that the regulations should be broadened to include uninspected vessels greater than 100 gross tons.

Our applicability for the security regulations in 33 CFR subchapter H is for all vessels; however, part 104 directly regulates those vessels we have determined may be involved in a transportation security incident. Fishing, recreational, and other vessels less than 100 gross tons are covered by parts 101 through 103 and, although there are no specific security measures for these vessels in these parts, the AMS Plan may set forth measures that will be implemented at the various Maritime Security (MARSEC) Levels that may apply to them.

Two commenters were concerned about the breadth of the regulations. One commenter asked that the regulations be broadened to allow for exemptions. One commenter stated that the applicability as described in § 101.110 is ''much too general,'' stating that it can be interpreted as including a canoe tied up next to a floating dock in front of a private home. The commenter concluded that such a broad definition would generate ''a large amount of'' confusion and discontent among recreational boaters and waterfront homeowners.

Our applicability for the security regulations in 33 CFR subchapter H is for all vessels and facilities; however, parts 104, 105, and 106 directly regulate those vessels and facilities we have determined may be involved in transportation security incidents, which does not include canoes and private residences. For example, § 104.105(a) applies to commercial vessels; therefore, a recreational boater is not regulated under part 104. If a waterfront homeowner does not meet any of the specifications in § 105.105(a), the waterfront homeowner is not regulated under part 105. It should be noted that all waterfront areas and boaters are covered by parts 101 through 103 and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various MARSEC Levels that may apply to them. Security zones and other measures to control vessel movement are some examples of AMS Plan actions that may affect a homeowner or a recreational boater. Additionally, the COTP may impose measures, when necessary, to prevent injury or damage or to address specific security concerns.

After further review of § 104.110, we recognized that vessels in lay-up status were not addressed. Therefore, we have amended § 104.110 to exempt those that are laid-up, dismantled, or out of commission. This change is consistent with the exemption in part 105 for facilities that receive such vessels.

One commenter stated that the requirements in part 104 are far more prescriptive and onerous than the Coast Guard's guidance previously issued in National Vessel Inspection Circular (NVIC) 10–02, Security Guidelines for Vessels.

The Coast Guard issued NVIC 10–02 before the MTSA became effective. The MTSA required us to develop regulations for maritime security. We developed these regulations, including part 104, to align with SOLAS and the ISPS Code, not previously issued NVICs.

Two commenters asked for clarification on applicability for government vessels. One commenter stated that there should be some form of regulation that covers security on government vessels. One commenter opposed exempting government vessels from part 104 if the vessel is leased to a private organization for commercial purposes.

The MTSA exempts certain government-owned vessels from the requirement to prepare and submit Vessel Security Plans. However, if a government-owned vessel engages in commercial service or carries even a single passenger for hire, these vessels are subject to these regulations. For those certain government-owned vessels exempt from security plans by the MTSA, the COTP will continue to work to ensure that security measures appropriate for these vessels' operations are addressed in a manner similar to our current oversight of safety measures.

Two commenters asked whether the submission requirement for Vessel Security Plans applies to foreign flag vessels.

As outlined in § 104.115(c), foreign flag vessels carrying a valid ISSC do not have to submit a Vessel Security Plan to the Coast Guard. Owners and operators of foreign flag vessels not required to comply with SOLAS must either submit their plans to the Coast Guard for approval, or comply with an Alternative Security Program implemented by their flag administration that has been approved by the Coast Guard. Additionally, we are amending § 104.140(b) to clarify that vessels subject to SOLAS may not use an Alternative Security Program.

Three commenters recommended developing an International Maritime Organization (IMO) list of port facilities to help foreign shipowners identify U.S. facilities not in compliance with subchapter H. In a related comment, there was a request for the Coast Guard to maintain and publish a list of non-compliant facilities and ports because a COTP may impose one or more control and compliance measures on a domestic or foreign vessel that has called on a facility or port that is not in compliance.

We do not intend to publish a list of each individual facility that complies or does not comply with part 105. As discussed in the temporary interim rule (68 FR 39262) (part 101), our regulations align with the requirements of the ISPS Code, part A, section 16.5, by using the AMS Plan to satisfy our international obligations to communicate to IMO, as required by SOLAS Chapter XI–2, regulation 13.3, the locations within the U.S. that are covered by an approved port facility security plan. Any U.S. facility that receives vessels subject to SOLAS is required to comply with part 105.

Two commenters asked for specific exemptions for specific vessels from these final rules.

This request is beyond the scope of these final rules. If part 104 applies to a vessel, the vessel owner or operator may request a waiver under the provisions of § 104.130; however, the only exemptions to part 104 are found in § 104.110. Questions on applicability for specific vessels should be directed to the local COTP.

Twelve commenters questioned our compliance dates. One commenter stated that because the June 2004 compliance date might not be easily achieved, the Coast Guard should consider a ''phased in'' approach to implementation. Four commenters asked us to verify our compliance date expectations and asked if a facility can ''gain relief'' from these deadlines for good reasons.

The MTSA requires full compliance with these regulations 1 year after the publication of the temporary interim rules, which were published on July 1, 2003. Therefore, a ''phased in approach'' will not be used. While compliance dates are mandatory, a vessel or facility owner or operator could ''gain relief'' from making physical improvements, such as installing equipment or fencing, by addressing the intended improvements in the Vessel or Facility Security Plan and explaining the equivalent security measures that will be put into place until improvements have been made.

In order to clarify compliance dates for the rule, we are amending the dates of compliance in § 104.115(a) and (b), § 104.120(a), § 104.297(c), and § 104.410(a) to align with the MTSA and the ISPS Code compliance dates.

Seven commenters observed that the deadline for submitting Vessel Security Assessments and Vessel Security Plans for foreign vessels to the Coast Guard is 6 months sooner than the deadline in SOLAS. Three commenters asked that § 104.115(a) be revised for clarification of the submission requirements for owners and operators of foreign flag vessels.

Foreign flag vessels need not submit their Vessel Security Assessments or Vessel Security Plans to the Coast Guard for review or approval. We have revised §§ 104.115, 104.120(a)(4), and 104.410(a), to clarify that owners and operators of foreign flag vessels that meet the applicable requirements of SOLAS Chapter XI will not have to submit their assessments or plans to the Coast Guard for review or approval. These amendments also clarify that foreign vessels, which may not be subject to or operating under SOLAS, may meet these requirements through either submission to the Coast Guard or their own flag administration. Flag administrations may apply the new international security requirements to vessels other than those required to comply with SOLAS, consistent with paragraph 4.46 of part B of the ISPS Code and Resolution 7 from IMO's Diplomatic Conference on Maritime Security. Furthermore, some flag administrations not party to SOLAS may decide to apply SOLAS Chapter XI and the ISPS Code requirements to their vessels trading with the U.S. In these latter two cases-where foreign vessels not subject to SOLAS may nevertheless be required by the flag administration to comply with the requirements of SOLAS Chapter XI and the ISPS Code-the Coast Guard intends to work with the flag administration if they propose initiatives such as an Alternative Security Program. This will likely be done through bilateral or multilateral arrangements. When no approved Alternative Security Program or bilateral arrangement exists, foreign flag vessels not subject to SOLAS covered by 33 CFR part 104 must submit their Vessel Security Assessments and Vessel Security Plans to the Coast Guard for review and approval.

Three commenters stated they were concerned that any U.S. flag vessel on an international voyage after July 1, 2004, without a proper ISSC, and possessing only a letter from the Marine Safety Center stating that its ''Vessel Security Plan was under review'' would be detained by foreign Port State Control Authorities. The commenter further suggested that we establish a priority system to complete the plan reviews of those vessels engaging on international voyages first.

We recognize the position a U.S. flag vessel may be in if it does not have an approved Vessel Security Plan and ISSC issued to it by July 1, 2004. Vessel Security Plans must be submitted to the Coast Guard by December 31, 2003. We plan to complete the review and approval of the Vessel Security Plans as soon as possible to allow the owners or operators enough time to request an inspection, at least 30 days prior to the desired inspection date, from the Officer in Charge, Marine Inspection at the port where the vessel will be inspected to verify compliance. Following verification of compliance the Coast Guard will issue an ISSC as appropriate before the July 1, 2004, entry into force date. We urge vessel owners and operators to work closely with the Coast Guard since the MTSA mandates that no vessel subject to this part may operate in waters subject to the jurisdiction of the U.S. after July 1, 2004, without an approved Vessel Security Plan.

We received three comments on Recognized Security Organizations (RSOs). One commenter believed that any question of ''underperformance'' on the part of an RSO should be taken up with the flag state that has made the designation and should not, in the first instance, be sufficient justification for the application of control measures on a vessel that has been certified by the RSO in question. Another commenter recommended that the Coast Guard maximize national consistency and transparency with regard to the factors that are evaluated in the targeting matrix. One commenter supported the Coast Guard's plan to use Port State Control to ensure that Vessel Security Assessments, Plans, and ISSCs approved by designated RSOs comply with the requirements of SOLAS and the ISPS Code.

In conducting Port State Control, the Coast Guard will consider the ''underperformance'' of an RSO. However, a vessel's or foreign port facility's history of compliance will also be important factors in determining what actions are deemed appropriate by the Coast Guard to ensure that maritime security is preserved.

Seven commenters requested that reference to the ISPS Code, part B, be removed from § 104.105(c) because according to IMO guidance, part B must be considered when a vessel's ISSC is issued; therefore, the commenters believe our requirement is unnecessary. One commenter requested that we state what type of attestation is acceptable to demonstrate that an ISSC has taken into account the relevant provisions of part B.

We have amended §§ 104.105(c) and 104.120 to clarify that we are not requiring separate documentation for application of the ISPS Code, part B. Foreign flag vessels required to comply with SOLAS Chapter XI–2 and the ISPS Code are required only to have on board a valid ISSC issued in accordance with section 19 of part A of the ISPS Code. This includes ensuring that the Vessel Security Plan meets the requirements in SOLAS Chapter XI–2 and the ISPS Code, part A, having taken into account the relevant provisions of part B. The form of the ISSC is contained in Appendix 1 of the ISPS Code, part A. There is no separate requirement in our regulations to document compliance with part B, although we do encourage flag administrations and RSOs to provide such documentation to assist our Port State Control efforts and reduce the potential for vessel delays. Although optional, this documentation could be in the form of a letter retained on board the vessel, signed by an authorized representative of the flag administration or RSO that clearly states that the Vessel Security Plan applies the relevant provisions of part B. We intend to use part B as one of the tools to assess a foreign vessel's compliance with SOLAS Chapter XI–2 and the ISPS Code, part A. We amended § 104.400(b) to be consistent with changes made above to clearly state that owners and operators of foreign flag vessels do not need to submit Vessel Security Plans if they have on board a valid ISSC.

Eleven commenters addressed the reference to the ISPS Code, part B, in the regulations. Three commenters asked whether the Coast Guard would accept an ISSC as evidence that a vessel was in compliance with the relevant provisions in the ISPS Code, part B.

Three commenters commended the Coast Guard for accepting an ISSC as *prima facie* evidence that the ship's flag administration has completed its obligation. One of these commenters also urged the Coast Guard to continue in its effort to ensure that domestic regulations ''mesh'' with the ISPS code.

As stated in § 104.120(a)(4), the ISSC will be considered evidence that the vessel complies with the ISPS Code, part A, and has taken into account the relevant provisions of part B.

Two commenters suggested that we add sample text to part 104 that would provide guidance to flag-state administrations on how to document foreign flag vessel compliance with the relevant provisions of the ISPS Code.

We disagree with the commenters. The Coast Guard cannot dictate to a foreign flag state administration the format of documentation to use to demonstrate compliance with the ISPS Code.

Several commenters had questions or comments regarding relationship between the regulations and the ISPS Code. Three commenters asked us to specify the procedures or dates, under our rules, with which foreign vessels must comply and that are different from SOLAS or ISPS Code requirements. Three commenters stated that it is inappropriate for the temporary interim rule to refer to the provisions of the ISPS Code, part B, as ''requirements.'' One commenter stated that the acceptance of a foreign vessel's ISSC presumes responsibility and compliance by a regime that is designed to avoid responsibility and compliance and imparts a multi-lateral interpretation on a unilateral Congressional intent. The commenter went further to state that permitting flag administrations to follow their own compliance methods may lead to corruption due to fraudulent, criminal, and terrorist-related activity.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, the Congress explicitly found that ''it is in the best interests of the U.S. to implement new international instruments that establish'' a maritime security system. We wholeheartedly agree and will exercise Port State Control to ensure that foreign flag vessels have approved plans and have, in fact, implemented adequate security standards. Port State Control will not be delegated to anyone. If vessels do not meet our security requirements, we have the power to prevent those vessels from entering the U.S., and we will not hesitate to use that power in appropriate cases. The Port State Control measures will include tracking the performance of all owners, operators, flag administrations, RSOs, charterers, and port facilities. Noncompliance will subject the vessel to a range of control and compliance measures, which could include denial of entry into port or significant delay. A vessel's or foreign port facility's history of compliance, or lack thereof, or security incidents involving a vessel or port facility will be important factors in determining what actions are deemed appropriate by the Coast Guard to ensure that maritime security is preserved. The Coast Guard's current Port State Control program has been highly effective in ensuring compliance with SOLAS safety requirements, and we believe that the incorporation of the ISPS Code requirements into this program is the most efficient and effective means to carry out our Port State Control responsibilities, enhance our ability to identify substandard vessels, ensure the security of our ports, and meet the Congressional intent of the MTSA.

After further review of parts 101 and 104 through 106, we have also amended §§ 101.120(b)(3), 104.120(a)(3), 105.120(c), and 106.115(c) to clarify that a vessel or facility that is participating in the Alternative Security Program must complete a vessel or facility specific security assessment report in accordance with the Alternative Security Program, and it must be readily available.

Three commenters asked that the Coast Guard clarify the meaning of ''scheduled inspection'' as indicated in § 104.120(b). One commenter suggested that Vessel Security Plans and related security documentation should be inspected at the annual Coast Guard documentation inspection and not at a separate inspection.

The Coast Guard conducts scheduled inspections during which time the Coast Guard requests and reviews documentation on board the vessel. In § 104.120(b), we require that the Vessel Security Plan and related security documentation be made available upon request to the Coast Guard during a scheduled inspection. A scheduled inspection is an inspection such as for the issuance of a Certificate of Inspection or an annual re-inspection for endorsement on a Certificate of Inspection. For uninspected vessels, we intend to check compliance with these regulations at a frequency that is similar to those existing uninspected vessel safety programs and in conjunction with other boardings.

One commenter requested that we clarify § 105.125, ''Noncompliance,'' to ''focus on only those areas of noncompliance that are the core building blocks of the facility security program'' stating that the section requires a ''self-report [of] every minor glitch in implementation.''

We did not intend for § 105.125 to require self-reporting for minor deviations from these regulations if they are corrected immediately. We have clarified §§ 104.125, 105.125, and 106.120 to make it clear that owners or operators are required to request permission from the Coast Guard to continue operations when temporarily unable to comply with the regulations.

We received seven comments regarding waivers, equivalencies, and alternatives. Three commenters appreciated the flexibility of the Coast Guard in extending the opportunity to apply for a waiver or propose an equivalent security measure to satisfy a specific requirement. Four commenters requested detailed information regarding the factors the Coast Guard will focus on when evaluating applications for waivers, equivalencies, and alternatives.

The Coast Guard believes that equivalencies and waivers provide flexibility for vessel owners and operators with unique operations. Sections 104.130, 105.130, and 106.125 state that vessel or facility owners or operators requesting waivers for any requirement of part 104, 105, or 106 must include justification for why the specific requirement is unnecessary for that particular owner's or operator's vessel or facility or its operating conditions. Section 101.120 addresses Alternative Security Programs and § 101.130 provides for equivalents to security measures. We intend to issue guidance that will provide more detailed information about the application procedures and requirements for waivers, equivalencies, and the Alternative Security Program.

Two commenters asked us to amend § 104.130 regarding waivers for vessels in order to explicitly address ''vessel-to-vessel interfaces.''

Any vessel owner or operator may apply for a waiver of any requirement of part 104, including the vessel-to-vessel activity provisions, that the owner or operator considers unnecessary in light of the nature of the operating conditions of the vessel. We are not adding any explicit references to particular

requirements that may be waived because listing these requirements could be interpreted as the only requirements that could be eligible for a waiver.

Two commenters stated that the Master should be added as a party, in addition to the owner or operator, to comply with MARSEC Directives.

We believe that the ultimate responsibility for ensuring compliance with 33 CFR part 104 and MARSEC Directives belongs to the owner or operator. The Master is always accountable to the owner or operator as an employee, and is responsible for the safety and security of the vessel.

One commenter questioned the need of long-range tracking for foreign vessels. The commenter also stated that only flag states should have the right to track their vessels worldwide and that port states should have only the capability to track vessels that have indicated an intention to enter port.

We have not addressed long-range tracking in this final rule because it is beyond the scope of this regulation.

Subpart B—Vessel Security Requirements

This subpart describes the responsibilities of the vessel owner, operator, and personnel relative to vessel security. It includes requirements for training, drills, recordkeeping, and Declarations of Security. It identifies specific security measures, such as those for access control, cargo handling, monitoring, and particular classes of vessels.

Two commenters suggested that the Coast Guard should not regulate security measures but should establish security guidelines based on facility type, in essence creating a matrix with ''risk-levels'' and suggested measures for facility security.

We cannot establish only guidelines because the MTSA and SOLAS require us to issue regulations. We have provided performance-based, rather than prescriptive, requirements in these regulations to give owners or operators flexibility in developing security plans tailored to vessels' or facilities' unique operations.

One commenter asked who would be ensuring the integrity of security training and exercise programs.

Since the events of September 11, 2001, the Coast Guard has developed a directorate responsible for port, vessel, and facility security. This directorate oversees implementation and enforcement of the regulations found in parts 101 through 106. Additionally, owners and operators of vessels and facilities will be responsible for recordkeeping regarding training, drills, and exercises. The Coast Guard intends to review these records during periodic inspections.

We received two comments on the requirements in § 104.200 regarding vessel owners and operators, stating that the provisions in this section are overly burdensome and difficult to implement.

We recognize that the provisions of § 104.200 may be challenging for some vessel owners and operators to implement. We have drafted this section to allow for maximum flexibility while ensuring that we address those vessels and operations that may be involved in a transportation security incident. Effective communication and coordination procedures for company employees, vessel crew, and others with whom they interact are necessary elements of maritime security. We believe that the maritime community, in large measure, already practices these procedures in their current operations. The intent of this section is to clarify those areas of maritime security that we believe every vessel owner and operator must consider as part of their operations.

Three commenters asked what security measures would be appropriate when taking barges from line boats to harbor boats to a barge fleeting area.

We understand that there are many diverse operations involved in the movement of tugs and barges, especially along rivers. In a towing vessel's Vessel Security Assessment, these operations and multiple barge interface activities must be evaluated. Those operations that make a barge-tug interface vulnerable to a transportation security incident must be mitigated through security measures detailed in the Vessel Security Plan for both the barge and the towing vessel. Some Alternative Security Programs tailored to tug and barge activities are being developed and may be useful in meeting these security requirements.

Nineteen commenters were concerned about the rights of seafarers at facilities. One commenter stated that the direct and specific references to shore leave in the regulations conform exactly with his position and the widespread belief that shore leave is a fundamental right of a seaman. One commenter stated that coordinating mariner shore leave with facility operators is important and should be retained, stating that shore leave for ships' crews exists as a fundamental seafarers' right that can be denied only in compelling circumstances. The commenter also stated that chaplains should continue to have access to vessels, especially during periods of heightened security. Four commenters requested that the regulations require facilities to allow vessel personnel access to the facilities for shore leave, or other purposes, stating that shore leave is a basic human right and should not be left to the discretion of the terminal owner or operator. One commenter stated that seafarers are being denied shore leave as they cannot apply for visas in a timely manner and that seafarers who meet all legal requirements should be permitted to move to and from the vessel through the facility, subject to reasonable requirements in the Facility Security Plan. One commenter stated that it is the responsibility of the government to determine appropriate measures for seafarers to disembark. One commenter encouraged the government to expedite the issuance of visas for shore leave.

We agree that coordinating mariner shore leave and chaplains' access to vessels with facility operators is important and should be retained. Sections 104.200(b)(6) and 105.200(b)(7) require owners or operators of vessels and facilities to coordinate shore leave for vessel personnel in advance of a vessel's arrival. We have not mandated, however, that facilities allow access for shore leave because during periods of heightened security shore leave may not be in the best interest of the vessel personnel, the facility, or the public. Mandating such access could also infringe on private property rights; however, we strongly encourage facility owners and operators to maximize opportunities for mariner shore leave and access to the vessel through the facility by seafarer welfare organizations. The Coast Guard does not issue, nor can it expedite the issuing of, visas. Additionally, visas are a matter of immigration law and are beyond the scope of these rules. Finally, it should also be noted that the government has treaties of friendship, commerce, and navigation with several nations. These treaties provide that seafarers shall be allowed ashore by public authorities when they and the vessel on which they arrive in port meet the applicable requirements or conditions for entry. We have amended §§ 104.200(b) and 105.200(b) to include language that treaties of friendship, commerce, and navigation should be taken into account when coordinating access between facility and vessel owners and operators.

After reviewing § 104.205, we made non-substantive editorial changes to clarify that Masters contact the Coast Guard via the National Response Center (NRC).

Two commenters requested that we add a provision that fully addresses the ''qualified individual'' portion of the

MTSA by allowing a Company Security Officer, Vessel Security Officer, Master, or other individual to serve as the qualified individual.

The MTSA does not require a company to designate a person as a ''qualified individual.'' Our requirements for the Company Security Officer, Vessel Security Officer, and the Master embody the MTSA requirement that the security plan identify who has full authority to implement security actions within a company.

One commenter stated that the responsibilities of a Company Security Officer in § 104.210 are too burdensome, too prescriptive, and outside the ''realm'' of what is associated with normal maritime operations.

It is not outside the realm of normal maritime operations for a company to consider security and the company's role in minimizing risk. We recognize that the provisions of § 104.210 may be challenging to implement for some Company Security Officers. We drafted this section to maximize the flexibility of Company Security Officers by allowing them to delegate responsibilities so long as the security of the company's operations is not compromised. The intent of this section is to outline those responsibilities that we believe are necessary for all Company Security Officers to effectively implement the security measures contained in Vessel Security Plans.

Seven commenters requested clarification on the roles of Company Security Officers and Vessel Security Officers. One commenter asked if they may be the same individual, or if the Coast Guard intended to have a minimum of two security officers within each company. Two commenters requested that we amend § 104.215 to allow the Vessel Security Officer to be a member of the crew or a ''regular complement of the vessel,'' stating that this would provide additional flexibility in assigning Vessel Security Officer responsibilities to others in the vessel's industrial complement and would not require a specific notation of the Vessel Security Officer on the vessel's Certificate of Inspection.

Sections 104.210(a)(3) and 104.215(a)(1) do not preclude an owner or operator of a company that owns vessels from appointing the same individual as both the Company Security Officer and Vessel Security Officer. The Company Security Officer may also be the Vessel Security Officer, provided he or she is able to perform the duties and responsibilities required of both positions. Generally, this provision is for vessels operating on restricted routes in a single COTP zone and for unmanned vessels. Under § 104.215(a)(2), however, the Vessel Security Officer for manned vessels must be the Master or a member of the crew. While we are making amendments to § 104.215 to clarify security responsibilities for unmanned vessels, we are not amending this section to explicitly identify the personnel that can be designated as crew because we intended the term ''crew'' to be sufficiently broad and include those persons that constitute the ''regular complement of the vessel.'' A vessel's Certificate of Inspection is issued under Title 46 of the Code of Federal Regulations and delineates crew as the vessels' complement for the safe operation and navigation of the vessel. While 33 CFR chapter I, subchapter H focuses on security, the broader interpretation of ''crew'' includes individuals and crew necessary for the safe operation and navigation of the vessel as well as those ''persons in addition to the crew.'' Thus, a Certificate of Inspection need not be amended to include a reference to the Vessel Security Officer.

Nine commenters requested formal alternatives to Facility Security Officers, Company Security Officers, and Vessel Security Officers much like the requirements of the Oil Pollution Act of 1990, which allow for alternate qualified individuals. Parts 104, 105, and 106 provide flexibility for a Company, Vessel, or Facility Security Officer to assign security duties to other vessel or facility personnel under §§ 104.210(a)(4), 104.215(a)(5), 105.205(a)(3), and 106.310(a)(3). An owner or operator is also allowed to designate more than one Company, Vessel, or Facility Security Officer. Because Company, Vessel, or Facility Security Officer responsibilities are key to security implementation, vessel and facility owners and operators are encouraged to assign an alternate Company, Vessel, or Facility Security Officer to coordinate vessel or facility security in the absence of the primary Company, Vessel, or Facility Security Officer.

One commenter stated that allowing the Vessel Security Officer and Facility Security Officer to perform collateral non-security duties is not an adequate response to risk.

Security responsibilities for the Company, Vessel, and Facility Security Officers in parts 104, 105, and 106 may be assigned to a dedicated individual if the owners or operators believe that the responsibilities and duties are best served by a person with no other duties.

Two commenters requested amending § 104.210 regarding the duties of the Company Security Officer to include explicit consideration of vessel-to-vessel activities.

The responsibilities in § 104.210 are in addition to requirements specified elsewhere in part 104. Security duties relating to vessel-to-vessel activities are not specifically assigned to either the Company Security Officer or the Vessel Security Officer. Vessel-to-vessel activities are addressed in § 104.250(a), where the vessel owner or operator must ensure that there are measures for interfacing with facilities and other vessels at all MARSEC Levels. This provides the owner or operator of the vessel the flexibility to determine the most appropriate personnel to handle vessel-to-vessel security concerns for their specific operations.

One commenter stated that it is unreasonable and unenforceable to require the Company Security Officer of a foreign company, not headquartered in the U.S., to be knowledgeable of U.S. domestic regulations. Similarly, one commenter stated that it is unreasonable and unenforceable for us to require the Facility Security Officer to be trained in relevant international laws, codes, and recommendations.

We disagree. Foreign flag vessels are required to comply with these regulations, including the Company Security Officer requirements. However, we do provide that those vessels required to comply with SOLAS and the ISPS Code will comply with these regulations by having on board an ISSC and a Vessel Security Plan that meets the requirements of SOLAS XI–2 and the ISPS Code, part A, taking into account the relevant provisions of the ISPS Code, part

B. Paragraph 13.1.3 of part B expressly states that the Company Security Officer, among other security personnel, should have knowledge of ''relevant'' government legislation and regulations, which clearly is not limited solely to those of the flag state. Therefore, the requirement in the regulations reflects the international standard. Furthermore, we do prescribe additional domestic security requirements for some foreign vessels, such as cruise ships. Therefore, as a practical matter, Company Security Officers must be knowledgeable of these regulations to adequately perform their duties.

One commenter requested that the Company Security Officer be allowed to liaise with the Coast Guard at the District, Area, or Headquarters level rather than the local COTP.

We agree that effective communication may be established between the Company Security Officer

and one or more COTPs and that for some companies, effective communications with the Coast Guard may be at the District, Area, or Headquarters level; therefore, we are amending the definition of ''Company Security Officer'' in part 101 of this subchapter to remove the specific reference to the COTP.

We received three comments on the requirements of § 104.215 regarding the responsibilities of the Vessel Security Officer, stating that the provisions are too burdensome, too prescriptive, and outside the ''realm'' of what is associated with vessel crewmembers'' duties.

It is not outside the realm of a vessel crew's duties to consider security and their role in minimizing risk; we also recognize that not every crewmember would be able to meet the challenging Vessel Security Officer provisions of § 104.215. The intent of this section is to outline those responsibilities that we believe are necessary for all Vessel Security Officers to effectively implement the security measures contained in Vessel Security Plans. However, we have also constructed this section to maximize the flexibility of Vessel Security Officers by allowing them to assign security duties to other crewmembers so long as the security of the vessel's operations is not compromised. In this way, other crewmembers can assist the Vessel Security Officer and learn about security related duties. Additionally, we allow persons to display general knowledge, which they may acquire through training or through equivalent job experience.

We received seven comments on the training of security personnel. One commenter believes that the addition of a Vessel Security Officer course is ''just the latest of a long line of new requirements that are becoming an unreasonable burden on Merchant Marine Officers.'' One commenter requested that the Coast Guard develop materials, course books, and videos to be used by the industry to conduct security training. One commenter stated that the Coast Guard should develop a training standard consistent with the International Convention for Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Two commenters stated that formal security training for mariners, including Company Security Officers, become mandatory as soon as possible. One commenter urged DHS to establish an integrated training program for Facility Security Officers.

We have worked with several other Federal agencies and industry experts on training for the maritime industry and recognize that the cumulative requirements for a new mariner are extensive. Accordingly, we do not currently require formal training or classroom courses for Vessel Security Officers, and the standards being developed through section 109 of the MTSA are intended to be flexible and dynamic. We are working on competencies and model-course standards with the Maritime Administration (MARAD) through IMO. As discussed in the preamble to the temporary interim rule (68 FR 39253) (part 101), there are continuing international training initiatives that have proposed seven course frameworks that coincide with requirements under section 109 of the MTSA. The training competencies found in the ISPS Code and repeated domestically in the MTSA ensure a streamlined approach so mariners worldwide will face the same competencies. Completion of a single course will satisfy both national and international standards. As presently proposed, the training may take place in a formal classroom setting or may be conducted on board a vessel or in other suitable settings. It is the overarching goal of the international community to incorporate this security training into the requirements of STCW.

We received 19 comments regarding the Vessel Security Officer requirement for towing and unmanned vessels. Six commenters disagreed with the requirement for towing vessels to have a Vessel Security Officer, stating it is an impractical requirement for a two-man harbor-towing vessel and will not enhance security. Nine commenters asked that the regulatory language be revised to clarify whether the Master of the vessel may be appointed as the Vessel Security Officer. One commenter asked if the Vessel Security Officer can be designated by title instead of by name. Three commenters felt that the responsibilities of the Vessel Security Officer in § 104.215(a)(3) and (4) should fall to the Company Security Officer.

We have required Vessel Security Officers on towing vessels greater than 8 meters that engage in towing barges transporting hazardous or dangerous cargos, because it is imperative that the responsibility for security on these vessels be clearly established. Recognizing that some of these towing vessels will have a small crew complement, we have not prohibited the Master from being the Vessel Security Officer. We have clarified this by amending § 104.215(a)(2) to include a specific reference to the Master. Section 104.200 provides that the Vessel Security Officer can be designated by name or by title; therefore, we have not amended this section. The duties of the Vessel Security Officer ensure that a knowledgeable person is on board or is directly responsible for coordinating the implementation of the Vessel Security Plan. We did not intend to preclude a Company Security Officer from also serving as a Vessel Security Officer for a towing or unmanned vessel. We have amended § 104.210(a)(3) to clarify that the Company Security Officer may serve as a Vessel Security Officer, provided that he or she is able to perform the duties and responsibilities of a Company Security Officer.

Eight commenters disagreed with the requirement that a Vessel Security Officer must be a crewmember because it is contradictory for unmanned vessels.

We recognize that, for an unmanned vessel, the requirement in § 104.215 is not explicit as to whether the Vessel Security Officer must be a member of the crew. We have amended § 104.215 to clarify that a Vessel Security Officer for unmanned vessels must be an employee of the company rather than a member of the crew.

Two commenters requested that § 104.215(c)(4) and (5) be amended to include the Master of the vessel in all proposed changes to, or problems with, the Vessel Security Plan, stating that the present regulatory language implies that the Master of the vessel need not be included in important security actions regarding the vessel.

It is the responsibility of the Company Security Officer to ensure a Vessel Security Plan is modified whenever necessary. In order for the Vessel Security Officer to adequately perform required duties, it is imperative that the Vessel Security Officer be able to propose modifications to the Company Security Officer who is ultimately responsible for making the necessary amendments. Sections 104.215(c)(4) and (5) do not preclude the Master, or any other personnel with security duties, from being involved in modifications to the Vessel Security Plan. We anticipate that the Master and other personnel with security duties will most likely be involved in those modifications, and do not believe that these personnel must be given the specific responsibilities for reviewing potential changes to the Vessel Security Plan.

One commenter requested that we amend language in § 104.220(c) to read ''Identify suspicious activity that could indicate actions that may threaten security.''

To remain consistent with the ISPS Code requirements, we did not amend the language in § 104.220(c); however,

the intent of the wording in § 104.220(c) encompasses the concept of ''identifying suspicious activity that could indicate actions that may threaten security.''

Two commenters suggested that ferries be exempt from the ''while at sea'' clause in § 104.220(i) that requires company or vessel personnel responsible for security duties to have knowledge on how to test and calibrate security equipment and systems and maintain them, arguing that ferries are not oceangoing and, therefore, typically use a manufacturer's service representative to perform equipment testing and calibration while at the dock. In addition, one commenter requested clarification on whether a manufacturer's technical expert could be used to perform regularly planned maintenance at the ferry terminal.

We disagree with exempting ferry or facility security personnel from understanding how to test, calibrate, or maintain security equipment and systems. However, §§ 104.220 and 105.210 provide the company the flexibility to determine who should have an understanding of how to test, calibrate, and maintain security equipment and systems. By stating ''company and vessel personnel responsible for security duties must* * *, as appropriate,'' we have allowed a company to write a Vessel or Facility Security Plan that outlines responsibilities for security equipment and systems. If the company chooses to have company security personnel hold that responsibility, then vessel or facility security personnel would simply have to know how to contact the correct company security personnel and know how to implement interim measures as a result of equipment failures either at sea or in port. Sections 104.220 and 105.210 do not preclude a manufacturer's service representative from performing equipment maintenance, testing, and calibration.

Two commenters requested that ferries and their terminals be exempt from conducting physical screening, and therefore, should also be exempt from §§ 104.220(l) and 105.210(l), which require security personnel to know how to screen persons, personal effects, baggage, cargo, and vessel stores.

We disagree with exempting ferries and their terminals from the screening requirement and, therefore, will continue to require that certain security personnel understand the various methods that could be used to conduct physical screening. Because ferries certificated to carry more than 150 passengers and the terminals that serve them may be involved in a transportation security incident, it is imperative that security measures, such as access control, be implemented. Section 104.292 provides passenger vessels and ferries alternatives to identification checks and passenger screening. However, it does not provide alternatives to the requirements for cargo or vehicle screening. Thus, ferry security personnel assigned to screening duties should know the methods for physical screening. There is no corresponding alternative to § 104.292 for terminals serving ferries carrying more than 150 passengers; therefore, terminal security personnel assigned to screening duties should also know the methods for physical screening.

Forty-one commenters requested that §§ 104.225, 105.215, and 106.220 be either reworded or eliminated because the requirement to provide detailed security training to all contractors who work in a vessel or facility or to facility employees, even those with no security responsibilities such as a secretary or clerk, is impractical, if not impossible. The commenters stated that, unless a contractor has specific security duties, a contractor should only need to know how, when, and to whom to report anything unusual as well as how to react during an emergency. One commenter suggested adding a new section that listed specific training requirements for contractors and vendors.

The requirements in §§ 104.225, 105.215, and 106.220 are meant to be basic security and emergency procedure training requirements for all personnel working in a vessel or facility. In most cases, the requirement is similar to the basic safety training given to visitors to ensure that they do not enter areas that could be harmful. To reduce the burden of these general training requirements, we allowed vessel and facility owners and operators to recognize equivalent job experience in meeting this requirement. However, we believe contractors need basic security training as much as any other personnel working on the vessel or facility. Depending on the vessel or facility, providing basic security training (*e.g.*, how and when to report information, to whom to report unusual behaviors, how to react during an emergency) could be sufficient. To emphasize this, we have amended §§ 104.225, 105.215, and 106.220 to clarify that the owners or operators of vessels and facilities must determine what basic security training requirements are appropriate for their operations.

Two commenters requested that the word ''seasonal'' be deleted from § 104.230(b)(1) regarding requirements for drills, stating that the word ''seasonal'' is irrelevant for owners and operators of uninspected vessels.

We disagree that the word ''seasonal'' is irrelevant because 33 CFR subchapter H covers a diverse population of vessels and facilities, some of whose owners and operators consider their operations ''seasonal'' in nature. It is imperative that the subset of owners and operators of vessels who consider their operations ''seasonal,'' whether inspected or uninspected, know that they must comply with the requirements in § 104.230(b)(1).

Two commenters recommended that drills only be required for manned vessels in § 104.230 since it is not possible to conduct a drill on an unmanned barge.

We agree that the nature of unmanned barges precludes the intensive personnel drills required for testing the proficiency of vessel personnel. However, each vessel subject to part 104, whether manned or unmanned, is required to submit a Vessel Security Plan for approval that includes drill and exercise requirements. Under § 104.230(b)(2), this plan should include those drill requirements that are appropriate for the nature and scope of that vessel's activity and adequately prepare the Vessel Security Officer to respond to those threats the vessel is most likely to encounter.

Sixteen commenters stated that requirements in § 104.230(b)(4) are unreasonable for vessels with 2 to 3-person crews, stating that the requirements that a drill must be conducted if one of the personnel is replaced, which could be as often as daily, is burdensome. Additionally, three commenters suggested that crewmembers should receive credit for drills that they participate in while on board other similar vessels.

We agree that it could be difficult to conduct drills for companies that rotate crews frequently or have standing relief crews. We have, therefore, amended § 104.230 to allow companies that operate vessels of similar design not subject to SOLAS to develop training and drill schedules that are more appropriate to their operations while keeping the standard of 25 percent. For example, a company operating several similar towing vessels could hire new crewmembers, have them participate in a drill on board one towing vessel, then rotate those crewmembers to any of the similar vessels within that same company's fleet without needing to conduct another drill for the moved crewmembers. Finally, we added the word ''from'' between ''week'' and ''whenever'' in § 104.230(b)(4) for clarity.

One commenter agreed with our inclusion of tabletop exercises as a cost-effective means of exercising the security plan.

Three commenters requested that annual exercises be conducted every 3 years, arguing that current drills are already too burdensome.

We believe that exercising the Vessel Security Plan frequently is essential to ensure the plan is effectively implemented; therefore, we have kept the annual requirement for an exercise of the Vessel Security Plan. Recognizing that participation in exercises can be time consuming and challenging to coordinate, we have allowed and encourage vessel owners and operators to combine security exercises with other exercises as stated in § 104.230(c)(2)(iii).

Nine commenters stated that companies should be able to take credit toward fulfilling the drill and exercise requirements for actual incidents or threats, as under § 103.515.

We agree that, during an increased MARSEC Level, vessel and facility owners and operators may be able to take credit for implementing the higher security measures in their security plans. However, there are cases where a vessel or facility implementing a Vessel or Facility Security Plan may not attain the higher MARSEC Level or otherwise not be required to implement sufficient provisions of the plan to qualify as an exercise. Therefore, we have amended parts 104, 105, and 106 to allow an actual increase in MARSEC Level to be credited as a drill or an exercise if the increase in MARSEC Level meets certain parameters. In the case of OCS facilities, this type of credit must be approved by the Coast Guard in a manner similar to the provision found in § 103.515 for the AMS Plan requirements.

One commenter stated that the language in § 105.225, regarding recordkeeping, does not specify where the records should be kept. The commenter stated that it is presumed that such records may be kept off-site in a secure location accessible to the Facility Security Officer and other appropriate personnel. One commenter asked for clarification of sensitive security information because there is no suitable place for such information to be protected on board an unmanned vessel. One commenter recommended that records be kept onshore and not on board the vessel.

Sections 104.235(a) and 105.225(a) state that the records must be made available to the Coast Guard upon request, and §§ 104.235(c) and 105.225(c) state that the records must be protected from unauthorized access. Therefore, a facility or vessel owner or operator must ensure that records are kept safely and also are available for inspection by the Coast Guard upon request, but the records do not necessarily have to be kept at the facility or on board the vessel.

Seven commenters stated that security records for harbor boats should be readily available but should not be maintained on the vessel for the security of those records.

We agree, and in § 104.235(a), we state that the Vessel Security Officer must keep records and make them available to the Coast Guard upon request. For vessels that make only domestic voyages, with the exception of Declarations of Security, these records may be kept somewhere other than on board the vessel, so long as they can be made available to the Coast Guard expeditiously upon request. For vessels subject to SOLAS, the ISPS Code, part A, section 10 requires records to be kept on board.

Five commenters stated that recordkeeping requirements should be limited to manned vessels. One commenter recommended that the Company Security Officer maintain and update all information for unmanned vessel security.

We disagree with the commenters. The regulations allow for a Vessel Security Officer to be a company representative for unmanned vessels and to be directly responsible for executing the recordkeeping requirements as specified in § 104.235. The requirements do not preclude the Vessel Security Officer from performing other duties within the organization, such as the Vessel Security Officer for unmanned vessels, provided he or she is able to perform the duties and responsibilities required of the Company Security Officer. We agree that the nature of operations for an unmanned barge makes recordkeeping different from that on a manned vessel; however, each vessel subject to part 104, whether manned or unmanned, must include recordkeeping to ensure compliance. The regulations do not preclude the Company Security Officer from being assigned the recordkeeping duties for unmanned vessels.

Two commenters recommended that a sentence be added to the end of § 105.225(b)(1) that reads: ''Short domain awareness and other orientation-type training that may be given to contractor and other personnel temporarily at the facility and not involved in security functions need not be recorded.'' The commenters stated that this change would eliminate the unnecessary recordkeeping for this general ''domain awareness'' training.

We agree that the recordkeeping requirements in § 105.225 for training are broad and may capture training that, while necessary, does not need to be formally recorded. Therefore, we have amended the requirements in § 105.225(b)(1) to only record training held to meet § 105.210. We have also made corresponding changes to §§ 104.235(b)(1) and 106.230(b)(1).

Twelve commenters inquired about the recordkeeping requirements for Declarations of Security. One commenter asked how long Declarations of Security must be kept. Three commenters suggested the retention for Declarations of Security should align with the Declarations of Inspection requirement of 30 days. Two commenters asked how the Coast Guard would enforce the requirement to maintain the last 10 Declarations of Security when a vessel may not yet have acquired 10 Declarations of Security.

As specified under § 104.235(b)(7), manned vessels must keep on board the vessel a copy of the last 10 Declarations of Security and a copy of each continuing Declaration of Security for at least 90 days after the end of its effective period. We require both vessels and facilities to retain Declarations of Security after they expire. We require vessels to retain Declarations of Security for their last 10 port visits. In order to roughly align the facility's retention requirement, as closely as possible, with the vessel's retention requirement, we estimated the average voyage of an ocean-going vessel. Doing this, we determined that a facility's 90-day retention period would more closely align with the vessel's 10-port visit retention period rather than the 30-day period used for Declarations of Inspection. We recognize that many factors, such as not being within U.S. waters during MARSEC Levels 2 and 3, may delay a vessel's ability to accumulate 10 Declarations of Security. If a vessel has on board fewer than the number of Declarations of Security required in § 104.235(b)(7), we will accept this vessel as meeting the intent of the section so long as it can be verified that the vessel was not required to complete more than the number of Declarations of Security kept on board.

One commenter stated that the Company Security Officer rather than the Vessel Security Officer should certify the certified letter required by § 104.235(b)(8), which states the date the annual audit of the Vessel Security Plan was completed. The commenter stated that this would focus the

section's security and administrative responsibilities at a single level.

We disagree with the recommendation to substitute the Company Security Officer for the Vessel Security Officer in § 104.235(b)(8) because that section generally places recordkeeping requirements on the Vessel Security Officer. However, we have amended the section to allow either the Vessel Security Officer or the Company Security Officer to certify the annual audit letter because this will align better with § 104.415(b), which allows either the Company Security Officer or Vessel Security Officer to ensure the performance of the annual audit.

Three commenters stated that the record of the annual audit of the Vessel Security Plan should be certified and kept by the Company Security Officer for barges and towing vessels, not the Vessel Security Officer.

In § 104.235(b)(8), we require an annual audit letter to be kept by the Vessel Security Officer. The annual audit certifies that the Vessel Security Plan continues to meet the applicable requirements of this part. Therefore, it is appropriate that the Vessel Security Officer keep the annual audit letter with the Vessel Security Plan.

One commenter asked if foreign vessels must have the Vessel Security Assessment on board.

If the vessel is issued an ISSC by its flag state attesting to its compliance with the ISPS Code, we will not require the vessel to have a Vessel Security Assessment on board. We will ensure that the vessel is implementing an effective Vessel Security Plan, which must address identified vulnerabilities, through an aggressive Port State Control program.

We received 28 comments regarding communication of changes in the MARSEC Levels. Most commenters were concerned about the Coast Guard's capability to communicate timely changes in MARSEC Levels to facilities and vessels. Some stressed the importance of MARSEC Level information reaching each port area in the COTP's zone and the entire maritime industry. Some stated that local Broadcast Notice to Mariners and MARSEC Directives are flawed methods of communication and stated that the only acceptable means to communicate changes in MARSEC Levels, from a timing standpoint, are via e-mail, phone, or fax as established by each COTP.

MARSEC Level changes are generally issued at the Commandant level and each Marine Safety Office (MSO) will be able to disseminate them to vessel and facility owners or operators, or their designees, by various means. Communication of MARSEC Levels will be done in the most expeditious means available, given the characteristics of the port and its operations. These means will be outlined in the AMS Plan and exercised to ensure vessel and facility owners and operators, or their designees, are able to quickly communicate with us and vice-versa. Because MARSEC Directives will not be as expeditiously communicated as other COTP Orders and are not meant to communicate changes in MARSEC Levels, we have amended § 101.300 to remove the reference to MARSEC Directives.

Two commenters requested that § 104.240(a) and (b)(1) be amended to specify that vessels must implement appropriate security measures before interfacing with facilities that are not located in a port.

We agree that the vessel owner or operator, once notified of a change in MARSEC Level, must implement appropriate security measures before interfacing with a facility that is not located in a port area. Facilities covered under part 105 will be within a port; facilities located on the Outer Continental Shelf, however, may not be included in a port. These OCS facilities should have similar security provisions to ports to ensure security. Therefore, we are amending § 104.240 to ensure that the vessel owner or operator is required to implement appropriate security measures in accordance with its Vessel Security Plan prior to interfacing with an OCS facility.

One commenter said that only manned vessels are capable of calling to verify attainment of increased MARSEC Levels and recommended that the Facility Security Officer be required to report attainment for unmanned barges moored at the facility. One commenter asked for clarification of § 104.240(b)(2) because facility and barge fleets have control of unmanned vessels moored at their facilities.

We disagree with the commenter. The regulations allow for a Vessel Security Officer to be a company representative for unmanned vessels, who may be designated by the owner or operator to report on the attainment of increased MARSEC Levels to the appropriate COTP, as specified in § 104.240. Any vessel, manned or unmanned, must be under the cognizance of a Vessel Security Officer or a Company Security Officer to ensure security measures are properly implemented.

Seven commenters stated that although facility or vessel personnel need to understand the current MARSEC Level and have a heightened state of awareness, in most cases, the specifics of the threat should not be disclosed.

It is necessary for the vessel or facility personnel to know about threats to the vessel or facility because this helps to focus their attention on specific attempts or types of threats to the vessel or facility. To balance this need with sensitive security concerns, §§ 104.240(c) and 105.230(c) give the owners or operators discretion in deciding how much specific information needs to be disclosed to facility or vessel personnel.

One commenter stated that the requirement in § 104.240(c) to brief all vessel personnel of identified threats at MARSEC Level 2 is unattainable and pointed out that implementing MARSEC Level 2 does not require an identified threat.

The intent of the requirement is to disclose as much information as is available and appropriate to vessel personnel to mitigate risk even if a threat is not identified. If there is no identified threat, the Vessel Security Officer is still required to brief all vessel personnel, emphasizing reporting procedures and the need for increased vigilance.

One commenter stated that requirements in § 104.240 regarding MARSEC Level 3 requirements for towing or moving vessels, waterborne security patrols, armed security personnel, and screening vessels for dangerous substances and devices should be applicable to cruise and other oceangoing vessels, but not to ferries.

We disagree that ferries should be exempt from the requirements of § 104.240. Our risk assessment showed that vessels with frequent schedules carrying over 150 passengers may be involved in a transportation security incident. When a transportation security incident is probable or imminent, therefore, § 104.240(e) allows the Coast Guard to require vessels, including ferries, to arrange for waterborne security patrols, armed security personnel, and vessel screening, as appropriate, to mitigate threat. The Coast Guard, in accordance with the AMS Plan, MARSEC Directive, or other COTP order, will communicate additional security measures deemed necessary.

Thirty-three commenters stated that the public lacks either the authority or the expertise for implementing the security measures for MARSEC Level 3, which include armed patrols, waterborne security, and underwater screening.

We disagree and believe that owners and operators have the authority to implement the identified security measures. For example, it is well settled under the law of every State that an employer may maintain private security guards or private security police to protect his or her property. The regulations do not require owners or operators to undertake law enforcement action, but rather to implement security measures consistent with their longstanding responsibility to ensure the security of their vessels and facilities, as specifically prescribed by 33 CFR 6.16–3 and 33 CFR 6.19–1, by: Deterring transportation security incidents; detecting an actual or a threatened transportation security incident for reporting to appropriate authorities; and, as authorized by the relevant jurisdiction, defending themselves and others against attack. It is also important to note that the security measures identified by these commenters, while listed in §§ 104.240(e) and 105.230(e), are not exclusive and only relate to MARSEC Level 3 implementation. In many instances, the owner or operator may decide to implement these security measures through qualified contractors or third parties who can provide any expertise that is lacking within the owner's or operator's own organization and who also have the required authority.

Four commenters stated that enforcing security on U.S. waterways is an inherently governmental function, not the responsibility of the maritime industry; therefore, the commenters do not want the crewmembers of foreign flag vessels to perform waterside security.

The intent of these regulations is not to mandate the use of crewmembers to perform waterside security, although that is an option. Those vessel owners and operators choosing to implement waterside security to meet the requirement of § 104.265(f) to ensure access control through additional measures during MARSEC Level 2 and, to enhance the security of the vessel during MARSEC Level 3, may choose to enter into agreements with the facility owner or operator, private security firms, or other parties to enhance the security of the vessel.

We received two comments addressing the affects of MARSEC Level changes on the STCW and International Labor Organization (ILO) standards. One commenter asked for confirmation that implementing MARSEC Level 2 ''automatically exempts vessels from the STCW and ILO work hour and rest requirements.'' One commenter stated disappointment that the regulations did not address the need for increased manning at MARSEC Level 3 to ensure that personnel can perform additional duties and comply with STCW mandated rest periods.

Vessel owners and operators are not exempt from any existing work hour and rest requirements when implementing these security requirements at MARSEC Level 2 or 3. The Vessel Security Plan must address how the security measures will be implemented at each MARSEC Level. Manning concerns must be considered during the Vessel Security Plan development and addressed during the plan's implementation.

One commenter asked the Coast Guard to provide guidance for operations at MARSEC Level 3 for vessels arriving from international voyages on: notification procedures, specific organizations able to provide armed security guards, and organizations able to provide underwater monitoring.

The Notice of Arrival requirements are contained in 33 CFR part 160. We encourage vessel owners and operators to contact their shipping agents in the COTP zones in which they operate to obtain information on firms and organizations that provide security services.

One commenter asked how, in accordance with § 104.240(d), the COTP will communicate permission to a vessel to enter the port if the vessel cannot implement its Vessel Security Plan.

The COTP can use a number of means to communicate to a vessel permission or denial to enter the port, such as issuing a COTP order denying entry or establishing conditions upon which the vessel may enter the port. Presently, communications to a vessel occur before entry to the port regarding required construction, safety, and equipment regulations. These communications occur through agents by satellite phone, fax, email, cellular phone, or radio communications.

We received nine comments questioning our use of the words ''continuous'' or ''continuously'' in the regulations. Four commenters requested that we amend language in § 104.245(b) by replacing the word ''continuous'' with the word ''continual,'' stating that ''continuous'' implies that there must be constant and uninterrupted communications. One commenter requested that we amend language in § 104.285(a)(1) by replacing the word ''continuously'' with the word ''continually,'' stating that ''continuously'' implies that there must be constant and uninterrupted application of the security measure. One commenter requested that we amend language in § 106.275 to replace the word ''continuously'' with the word ''frequently.'' One commenter recommended that instead of using the word ''continuously'' in § 105.275, the Coast Guard revise the definition of monitor to mean a ''systematic process for providing surveillance for a facility.'' One commenter stated that the continuous monitoring requirements in § 106.275 place a significant burden on the owners and operators of OCS facilities because increased staff levels would be necessary to keep watch not only in the facility, but also in the surrounding area.

We did not amend the language in §§ 104.245(b) 105.235(b), or 106.240(b) because the sections require that communications systems and procedures must allow for ''effective and continuous communications.'' This means that vessel owners or operators must always be able to communicate, not that they must always be communicating. Similarly, §§ 104.285, 105.275, and 106.275, as a general requirement, require vessel and facility owners or operators to have the capability to ''continuously monitor.'' This means that vessel and facility owners or operators must always be able to monitor. We have amended §§ 104.285(b)(4) and 106.275(b)(4) to use the word ''continuously'' instead of ''continually'' to be consistent with § 105.275(b)(1). This general requirement is further refined in §§ 104.285, 105.275,and 106.275, in that the Vessel and Facility Security Plans must detail the measures sufficient to meet the monitoring requirements at the three MARSEC Levels.

Three commenters disagreed with the requirement to have a security alert system on a river harbor towing vessel because it would serve no useful purpose.

We have not required a security alert system for towing vessels unless they are also subject to SOLAS. In § 101.310 we state that a security alert system may be a useful addition to certain operations and could be used to meet some of the communications requirements in subchapter H; however, we did not mandate its use for all vessels.

Two commenters suggested that the Coast Guard should be responsible for facilitating communications between vessels and facilities.

We believe that it is the Coast Guard's role to ensure that vessels and facilities have the proper procedures and equipment for communicating with

each other. The Coast Guard does have communication responsibilities, as found in § 101.300. It is imperative, however, that vessels and facilities communicate with each other in order to effectively coordinate the implementation of security measures. Thus, we have placed this requirement on the owner or operator, not the Coast Guard. The Coast Guard will be inspecting facilities and vessels to ensure this communication is accomplished.

We received 14 comments about the length of the effective period of a continuing Declaration of Security for each MARSEC Level. Five commenters stated that there is little need to renew a Declaration of Security every 90 days and that it should instead be part of an annual review of the Vessel Security Plan. Three commenters stated that the effective period of MARSEC Level 1 should not exceed 180 days while the effective period for MARSEC Level 2 should not exceed 90 days. One commenter noted that a vessel may execute a continuing Declaration of Security and assumed that this means that a Declaration of Security for a regular operating public transit system is good for the duration of the service route. Three commenters recommended that the effective period for a Declaration of Security be either 90 days or the term for which a vessel's service to an OCS facility is contracted, whichever is greater. Two commenters recommended allowing ferry service operators and facility operators to enact pre-executed MARSEC Level 2 condition agreements rather than initiating a new Declaration of Security at every MARSEC Level change.

We disagree with these comments and believe that continuing Declaration of Security agreements between vessel and facility owners and operators should be periodically reviewed to respond to the frequent changes in operations, personnel, and other conditions. We believe that the Declaration of Security ensures essential security-related coordination and communication among vessels and facilities. Renewing a continuing Declaration of Security agreement requires only a brief interaction between vessel and facility owners and operators to review the essential elements of the agreement. Additionally, at a heightened MARSEC Level, that threat must be assessed and a new Declaration of Security must be completed. Less frequent review, such as during an annual or biannual review of the Vessel Security Plan, does not provide adequate oversight of the Declaration of Security agreement to ensure all parties are aware of their security responsibilities.

Five commenters requested that § 104.255(c) and (d) be amended so that a Declaration of Security need not be exchanged when conditions (*e.g.*, adverse weather) would preclude the exchange of the Declaration of Security.

We are not amending § 104.255(c) and (d) because as stated in § 104.205(b), if, in the professional judgment of the Master, a conflict between any safety and security requirements applicable to the vessel arises during its operations, the Master may give precedence to measures intended to maintain the safety of the vessel and take such temporary security measures as deemed best under all circumstances. Therefore, if the Declaration of Security between a vessel and facility could not be safely exchanged, the Master would not need to exchange the Declaration of Security before the interface. However, under § 104.205(b)(1), (b)(2), and (b)(3), the Master would have to inform the nearest COTP of the delay in exchanging the Declaration of Security, meet alternative security measures considered commensurate with the prevailing MARSEC Level, and ensure that the COTP was satisfied with the ultimate resolution. In reviewing this provision, we realized that a similar provision to balance safety and security was not included in parts 105 or 106. We have amended these parts to give the owners or operators of facilities the responsibility of resolving conflicts between safety and security.

Five commenters asked whether a company could have an agreement with a facility that outlines the responsibilities of all the company's vessels instead of a separate Declaration of Security for each vessel. The commenters stated that this would make the Declaration of Security more manageable for companies, vessels, and facilities that frequently interface with each other. One commenter raised a similar concern regarding barges and tugs conducting bunkering operations. One commenter suggested that Declarations of Security not be required when the vessels and ''their docking facilities'' share a common owner.

As stated in §§ 104.255(e), 105.245(e), and 106.250(e), at MARSEC Levels 1 and 2, owners or operators may establish continuing Declaration of Security procedures for vessels and facilities that frequently interface with each other. These sections do not preclude owners and operators from developing Declaration of Security procedures that could apply to vessels and facilities that frequently interface. However, as stated in §§ 104.255(c) and (d), 105.245(d), and 106.250(d), at MARSEC Level 3, all vessels and facilities required to comply with parts 104, 105, and 106 must enact a Declaration of Security agreement each time they interface. We believe that, even when under common ownership, vessels and facilities must coordinate security measures at higher MARSEC Levels and therefore should execute Declarations of Security. For MARSEC Level 1, only cruise ships and vessels carrying Certain Dangerous Cargoes (CDC) in bulk, and facilities that receive them, even when under common ownership, are required to complete a Declaration of Security each time they interface.

Three commenters suggested that the regulations should require that the Vessel Security Officer and Facility Security Officer have verified-via email, phone, or other suitable means prior to the vessel's arrival in the port-that the provisions of the Declaration of Security remain valid.

We disagree that there is a need to specify the means of communicating between the Vessel Security Officer and the Facility Security Officer about the provisions of the Declaration of Security. To maintain flexibility, the regulations neither preclude nor mandate a specific means to use when discussing a Declaration of Security.

Eight commenters stated that there is significant confusion regarding the requirements to complete Declarations of Security, especially when dealing with unmanned barges. One commenter asked if a Declaration of Security is required when an unmanned barge is ''being dropped'' at a facility or when ''changing tows.''

We agree with the commenter and are amending §§ 104.255(c) and (d) and 106.250(d) to clarify that unmanned barges are not required to complete a Declaration of Security at any MARSEC Level. This aligns these requirements with those of § 105.245(d). At MARSEC Levels 2 and 3, a Declaration of Security must be completed whenever a manned vessel that must comply with this part is moored to a facility or for the duration of any vessel-to-vessel activity.

Three commenters asked when the Coast Guard would communicate standards for U.S. flag vessels and facilities as to the timing and format of a Declaration of Security. One commenter requested information about how Declaration of Security requirements will be communicated to and coordinated with vessels that do not regularly call on U.S. ports and specific facilities.

As specified in § 101.505, the format of a Declaration of Security is described

in SOLAS Chapter XI–2, Regulation 10, and the ISPS Code. The timing requirements for the Declaration of Security are specified §§ 104.255 and 105.245. The format for a Declaration of Security can be found as an appendix to the ISPS Code. We agree that the format requirement was not clearly included in § 101.505(a) when we called out the incorporation by reference. Therefore, we have explicitly included a reference to the format in § 101.505(b).

One commenter wanted to know who will become the arbiter in the event of a disagreement between a vessel and a facility, or between two vessels, in regards to the Declaration of Security.

We do not anticipate this will be a frequent problem. The regulations do not provide for or specify an arbiter in the event that an agreement cannot be reached for a Declaration of Security. It is important to note that failure to resolve any such disagreement prior to the vessel-to-facility interface may result in civil penalties or other sanctions.

Five commenters urged us to exempt offshore supply vessels and the facilities or OCS facilities they interact with from the Declaration of Security requirements because they do not pose a higher risk to persons, property, or the environment.

We disagree with the commenters, and we believe that the regulated vessels and the facilities that they interface with may be involved in a transportation security incident. In addition, Declarations of Security ensure essential security-related coordination and communication among vessels and OCS facilities.

One commenter asked whether the Declaration of Security requirement applies to vessel-to-vessel activity or vessel-to-facility interfaces beyond the 12-mile limit but still in the U.S. Exclusive Economic Zone (EEZ).

Vessel-to-vessel activity in the EEZ is not included in these regulations, except if one of the vessels is intending to enter a U.S. port. The regulations do apply to vessels interfacing with OCS facilities.

One commenter stated that the Declaration of Security procedures could put vessels at a competitive disadvantage when dealing with a facility that may demand that vessels pay for all the security. The commenter suggested that the Coast Guard act as arbiter when disputes arise between facilities and vessels concerning who is responsible for specific security measures.

The fundamental intent of these regulations is to establish cooperation and communication between owners and operators of facilities and vessels to minimize the potential for a transportation security incident. A facility that places the onus on vessels to provide all the security would be acting contrary to the regulations. When approving security plans, the COTP has the discretion to determine whether a facility has implemented sufficient security measures to meet the requirements of these regulations. Any agreements or mandates that the facility owner or operator intends to prescribe to vessels should be reflected in the Facility Security Plan.

Five commenters recommended that § 104.255(b)(1), (b)(2), and (c) be amended so that the security arrangements required by this section may be arranged ''on or prior to'' rather than ''prior to.'' One commenter recommended that we amend § 104.255(c) to waive the Declaration of Security requirements except in cases where the duration of the interface will exceed 3 hours.

We believe that it is important for the Vessel Security Officer and the Facility Security Officer to be in communication ''prior'' to the vessel's arrival at the facility. Using a lower standard of ''on or prior to'' may not ensure that all the necessary security measures will be in place at the vessel's arrival. Therefore, we did not make the amendment to the language in paragraphs (b)(1) or (b)(2) of this section. However, we are amending § 104.255(c) and (d) so that the Vessel Security Officer and the Facility Security Officer can coordinate security needs and procedures, and agree upon the contents of the Declaration of Security for the interface. The signing of the Declaration of Security can occur upon interface. We do not intend to waive any of the Declaration of Security requirements for interfaces during higher MARSEC levels. The changes to § 104.255(c) and (d) align the procedures for Declaration of Security at each MARSEC Level. We also amended the language in § 104.255(b)(2) to clarify that this paragraph applies to the period of time for the vessel-to-vessel activity.

Two commenters stated that it is confusing as to whether a vessel not carrying CDC must provide a Declaration of Security at a facility or another vessel's request until MARSEC Level 2.

At MARSEC Level 1, only cruise ships and vessels certificated to carry CDC are required to establish a Declaration of Security. At MARSEC Levels 2 and 3, all vessel-to-facility interfaces require a Declaration of Security. Owners and operators may establish continuing Declarations of Security for any vessel in accordance with § 104.255(e)(2) and (e)(3).

One commenter suggested that the Coast Guard establish additional criteria for certain expensive security equipment (*e.g.*, access controls, lighting, and surveillance). The commenter said this would be helpful in ensuring a minimum compliance standard for those equipment elements that will be most costly to owners and operators.

Our regulations set performance standards. Some industry standards already exist or are being developed by trade or standards-setting organizations. Owners and operators may assess their own security needs and the measures that best meet those needs, given the particular characteristics and unique operations of their vessels and facilities.

Seven commenters suggested that, instead of requiring disciplinary measures to discourage abuse of identification systems, the Coast Guard should merely require companies to develop policies and procedures that discourage abuse. One commenter opposed provisions of these rules relating to identification checks of passengers and workers. The commenter stated that these provisions threaten constitutional rights to privacy, travel, and association, and are too broad for their purpose. The commenter argued that identification methods are inaccurate or unproven and can be abused, and that the costs of requiring identification checks outweigh the proven benefit.

We recognize the seriousness of the commenters' concerns, but disagree that provisions for checking passenger and worker identification should be withdrawn. Identification checks, by themselves, may not ensure effective access control, but they can be critically important in attaining access control. Our rules implement the MTSA and the ISPS Code by requiring vessel and facility owners and operators to include access control measures in their security plans. However, instead of mandating uniform national measures, we leave owners and operators free to choose their own access control measures. In addition, our rules contain several provisions that work in favor of privacy. Identification systems must use disciplinary measures to discourage abuse. Owners and operators can take advantage of rules allowing for the use of alternatives, equivalents, and waivers. Passenger and ferry vessel owners or operators are specifically authorized to develop alternatives to passenger identification checks and screening. Signage requirements ensure that passengers and workers will have advance notice of their liability for screening or inspection. Vessel owners

and operators are required to give particular consideration to the convenience, comfort, and personal privacy of vessel personnel. Taken as a whole, these rules strike the proper balance between implementing the MTSA's provisions for deterring transportation security incidents and preserving constitutional rights to privacy, travel, and association.

One commenter recommended that the ''means of access'' listed in § 104.265(b)(1) should only include traditional vessel access areas.

Each vessel must perform a Vessel Security Assessment, as required by § 104.305, to identify those areas that provide a means of access to the vessel. The list of means of access provided in § 104.265(b)(1) is not intended to be an all-inclusive or minimum list for each individual vessel.

One commenter suggested we remove § 104.265(c)(6), which allows certain, long-term, frequent vendor representatives to be treated more as employees than as visitors.

We disagree with the commenter. This language is found in the ISPS Code and provides additional flexibility when dealing with these frequent representatives.

One commenter asked if the Coast Guard would issue guidelines on screening.

The Coast Guard intends to coordinate with the Transportation Security Administration (TSA) and the Bureau of Customs and Border Protection (BCBP) in publishing guidance on screening to ensure that such guidance is consistent with intermodal policies and standards of TSA, and the standards and programs of BCBP for the screening of international passengers and cargo. Additionally, TSA is developing a list of items prohibited from being carried on board passenger vessels.

One commenter recommended removing the provision that mandated screening of persons, baggage, and vehicles at MARSEC Level 1. The same commenter also recommended removing the provision for designations of a secure area on board the vessel for the purposes of screening ''baggage (including carry on items), personal effects, vehicles, and the vehicle's contents.''

We disagree with the commenter. We believe that screening of persons, their personal effects, and vehicles are necessary at all MARSEC Levels to minimize the risk of a transportation security incident. However, while we mandate that all vessels must implement screening procedures, we provide the flexibility for those vessels to determine what those screening procedures should be, taking into account the type of vessel and the geographical region where that vessel is operating. Additionally, the intent of the regulations is that the secure area used to conduct the screening of baggage or personal effects could be the same location where the screening of persons entering the vessel takes place. Because we have kept the screening requirements in these final rules, we have also retained the provisions for designating a secure area on board the vessel or in liaison with the facility for conducting inspections and screening.

We received two comments on vehicle searches. One commenter stated that vehicle screenings prior to boarding vessels ''are not warranted.'' One commenter suggested that the government is responsible for vehicle inspections and searches.

We disagree. Vehicles may be used to cause a transportation security incident. Therefore, the screening of vehicles is warranted.

We received requests from other Federal agencies to clarify that government-owned vehicles on official business should not be subject to search. We agree and are amending § 104.265(e)(1) to exempt government-owned vehicles on official business from screening or inspection. This does not exempt government personnel from presenting identification credentials on demand for entry onto vessels or facilities.

One commenter suggested using bomb-sniffing dogs to scan all vehicles in a ferry lot prior to boarding a ferry, along with ''uniformed troopers'' who remain visible for the trip.

Section 104.265 gives ferry owners and operators the flexibility to implement those security measures that meet the given performance standards. Owners and operators of ferry terminals and vessels may submit security plans that include security measures such as bomb-sniffing dogs and uniformed security guards to meet the performance standards in security plans.

Three commenters stated that they want to be able to lawfully carry firearms on ferries and do not want to check their firearms on a short ferry trip.

While the regulations require vessel owners and operators to deter the introduction of dangerous substances and devices, in accordance with § 104.265, the regulations do not mandate the checking of lawfully carried firearms. Our regulations are flexible to handle daily operations and allow the owners and operators to develop appropriate procedures that ensure the security of its passenger or commercial activities. All security plans will be reviewed by the Coast Guard to ensure compliance with access control regulations.

Three commenters stated that many of the requirements of § 104.265, Security measures for access control, should not apply to unmanned vessels because there is no person on board the vessel at most times.

We disagree. The owner or operator must ensure the implementation of security measures to control access because unmanned barges directly regulated under this subchapter may be involved in a transportation security incident. As provided in § 104.215(a)(4), the Vessel Security Officer of an unmanned barge must coordinate with the Vessel Security Officer of any towing vessel and Facility Security Officer of any facility to ensure the implementation of security measures for the unmanned barge. We have amended § 105.200 to clarify the facility owner's or operator's responsibility for the implementation of security measures for unattended or unmanned vessels while moored at a facility.

One commenter asked if there is a difference between the terms ''screening'' and ''inspection'' as used in § 104.265(e)(2), requiring conspicuously posted signs.

In 33 CFR subchapter H, the terms ''screening'' and ''inspection'' fully reflect the types of examinations that may be conducted under §§ 104.265, 105.255, and 106.260. Therefore, both terms are included to maximize clarity.

We received 10 comments regarding signage and posting of signs. Ten commenters stated that posting new signs required in § 104.265(e)(2), on board unmanned barges that describe the security measures in place is unnecessary because existing signs indicate that visitors are not permitted on board. One commenter stated that the requirements in § 105.255(e)(2) regarding signage are too prescriptive and believed that facilities should be allowed to post signs as they deem necessary and not attract additional attention.

We disagree with the comment and believe that signs, appropriately posted, serve as a deterrent against unauthorized entry and provide awareness for facility security personnel. Although signage is primarily aimed at manned vessels, we extended this to all vessels because all vessels may on occasion be boarded by persons whose entry would subject them to possible screening. If existing signs accomplish this, the owner or operator is in compliance with the regulation.

One commenter stated that the prohibitions regarding vessel personnel screening by other vessel personnel should apply at all MARSEC Levels.

The intent of § 104.265(e)(9) is to require the owner or operator of a vessel to ensure that crewmembers do not engage in screening other crewmembers. We have amended the paragraph for clarity.

Sixteen commenters voiced concern that the regulations may require that security personnel and crewmembers be armed. Six commenters suggested § 104.265(e)(15) be amended to read: ''Response to the presence of unauthorized persons on board,'' stating that the current regulatory text implies that security personnel must be armed, which poses unacceptable risks to the vessel and its crew. Five commenters suggested revising §§ 104.290(a)(1) and (2) unless it is meant that crewmembers be armed as first responders during an attack. Three commenters stated that facility employee responsibilities should ''not include meeting force with force.'' Three commenters suggested that we amend § 104.290(a)(1) to revise ''Prohibiting'' to read ''Deter to the best of their ability'' and § 104.290(a)(2) to revise ''Deny'' to read ''Denying access to the best of their ability.''

The regulatory language in § 104.265(e)(15) does not require that vessel personnel be armed in order to repel unauthorized personnel onboard, although it is an option. The requirement to respond to unauthorized personnel onboard a vessel does not necessarily require security personnel to repel unauthorized boarders, but rather to have in place measures that will detect and deter persons from gaining unauthorized access to the vessel or facility. If unauthorized access is attempted or gained at a vessel or facility, then the Vessel Security Plan or Facility Security Plan must describe the security measures to address such an incident, including measures for contacting the appropriate authorities and preventing the unauthorized boarder from gaining access to restricted areas. We are not requiring the owner or operator to put any personnel in ''harm's way,'' (*i.e.*, by mandating using deadly force to confront deadly force). We have not changed § 104.290 as suggested by the commenter because we believe these suggested changes would erode the level of security to be achieved by the regulations. Owners and operators may find guidance in the IMO's Circular titled ''Piracy and Armed Robbery, Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships,'' MSC/Cir.623/Rev.3, to be a useful reference in this regard. We are amending § 104.265(b) to include a verb in the sentence for clarity. We are also mirroring this clarification in §§ 105.255(b) and 106.260(b).

Nine commenters were concerned about the designation of restricted areas. Six commenters requested that the Coast Guard clarify the wording in §§ 104.270(b) and 105.260(b) that states ''Restricted areas must include, as appropriate:'' because it is contradictory to impose a requirement with the word ''must,'' while offering the flexibility by stating ''as appropriate.'' One commenter stated that the provision that allows owners or operators to designate their entire facility as a restricted area could result in areas being designated as restricted without any legitimate security reason.

We believe that the current wording of §§ 104.270(b), 105.260(b), and 106.265(b) is acceptable. While the word ''must'' requires owners or operators to designate restricted areas, the word ''appropriate'' allows flexibility for owners or operators to restrict areas that are significant to their operations. The regulations provide for the entire facility to be designated as a restricted area, whereby a facility owner or operator would then be required to provide appropriate security measures to prevent unauthorized access into the entire facility.

One commenter stated that a ''ventilation and air-conditioning system'' as stated in § 104.270(b)(3) cannot be marked as a restricted area, and requested it be changed to read ''ventilation and air-conditioning system control spaces.''

Section 104.270(b)(3) aligns with the wording of the ISPS Code. The term ''spaces'' modifies the terms ''ventilation and air-conditioning system'' in the requirement. The intent of this requirement in the ISPS Code development was to align with various other control space definitions such as those found in SOLAS, Chapter II–2. Therefore, we have not revised the text in § 104.270 but intend to address control spaces and restricted area designations in plan review guidance.

One commenter stated that it is impractical and unsafe to lock all access ways to vessel crew accommodations, which are restricted areas, noting that the more doors that are locked in ''normal passageways'' the less safe the vessel becomes.

Section 104.270(d) provides a non-exhaustive list of security measures that an owner or operator may use to prevent unauthorized access to restricted areas. Only one of these measures is locking or securing access points to restricted areas. Other methods include monitoring, using guards, or using automatic intrusion detection. The owner or operator may also use other measures to prevent unauthorized access. Finally, we recognize the potential competition between maximizing safety and maximizing security and in § 104.205(b), state, that ''If * * * a conflict between any safety and security requirements applicable to the vessel arises during its operations, the Master may give precedence to measures intended to maintain the safety of the vessel, and take such temporary security measures as seem best under all circumstances.'' However, this provision does not circumvent overall security of vessels because the section also requires, in § 104.205(b)(3), that the owner or operator ensure the conflict is permanently resolved to the satisfaction of the Coast Guard.

Fourteen commenters stated that the requirements in § 104.275 regarding cargo handling are overly burdensome and difficult to implement. One commenter suggested that the regulations ensure that empty containers be opened and inspected. Three commenters stated it is not possible for a vessel owner or operator to ensure that cargo is not tampered with prior to being loaded, to identify cargo being brought on board, or to check cargo for dangerous substances. One commenter stated that imports should be screened at the loading port, not once they were in the U.S. and that the U.S. focus should be on knowing with whom vessel owners and operators are doing business. One commenter urged that the final rule clarify whether coordinating security measures with the shipper or other responsible party is mandatory. One commenter stated that checking cargo for dangerous substances or devices is a governmental function. Three commenters stated that the requirement in § 105.265(a)(9) to maintain a continuous inventory of all dangerous goods and hazardous substances passing through the facility is unnecessarily burdensome and should be deleted.

We recognize that screening for dangerous substances and devices is a complex and technically difficult task to implement. We have amended §§ 104.275 and 105.265 to clarify that cargo checks should be focused on the cargo, containers, or other cargo transport units arriving at or on the facility or vessel to detect evidence of tampering or to prevent cargo that is not meant for carriage from being accepted and stored at the facility without the knowing consent of the facility owner or

operator. Checking cargo containers may be limited to external examinations to detect signs of tampering, including checking of the integrity of seals; however screening the vehicle the cargo container arrives on remains a requirement under these regulations. The issue of cargo screening will be addressed by TSA, BCBP, and other appropriate agencies through programs such as the Customs-Trade Partnership Against Terrorism (C–TPAT), the Container Security Initiative (CSI), performance standards developed under section 111 of the MTSA, and the Secure Systems of Transportation (SST) under 46 U.S.C. 70116. The requirement to ensure the coordination of security measures with the shipper or other party aligns with the ISPS Code. It is intended that provisions be coordinated when there are regular or repeated cargo operations with the same shipper. This facilitates security between the shipper and the facility; therefore, we have made this type of coordination mandatory. We have, however, amended §§ 104.275(a)(5) and 105.265(a)(8) to clarify that this coordination is only required for frequent shippers. The requirements in § 105.265(a)(9) may be challenging to implement, but the requirements are consistent with the ISPS Code, part B. We believe that a continuous inventory of goods is important to the security of facilities, especially for those that handle dangerous goods or hazardous substances and may be involved in a transportation security incident.

Ten commenters were concerned about health and occupational safety during inspection of cargo spaces. Five commenters raised this concern in connection with tank barges, under the vessel security measures for handling cargo, § 104.275(b) and (c), and two other commenters raised the concern under the facility cargo-handling requirements in § 105.265(b)(1) and (b)(4).

Under § 104.275, we provide flexibility in how cargo spaces must be checked. This allows owners and operators to take safety into account in devising cargo check procedures. To emphasize safety during cargo operations, we have amended §§ 104.275(b)(1) and 105.265(b)(1) to reflect that a check on cargo and cargo spaces should be done unless it is unsafe to do so. We did not amend § 104.275(b)(4) in a similar manner because if the check of seals or other methods used to prevent tampering is unsafe for vessel personnel to conduct, they should liaise with the facility to ensure this is done.

Two commenters requested that § 104.275(a) describing the ''liaison'' between vessels and facilities during cargo transfers be amended to include the ''liaison'' between vessels and other vessels during ''vessel-to-vessel interfaces.''

We agree that a vessel-to-facility interface or a vessel-to-vessel activity could include cargo handling; therefore, we have amended § 104.275 to reflect vessel-to-vessel transfers of cargo in those paragraphs we believe require this clarification.

Three commenters asked the Coast Guard to issue guidance on using lighting to monitor a vessel underway. The commenters stated that lighting that diminishes the visibility of navigation lights will be detrimental to safety.

We believe that any lighting installed on board vessels must not compromise navigational safety. We do not intend at this time, however, to issue specific guidance on lighting. The Master is responsible for assuring that lighting installed for security monitoring does not interfere with navigational safety. Section 104.285(a)(2) lists the issues that must be considered when establishing the level and location of lighting. Section 104.285(a)(2)(iv) states that lighting effects, such as glare, and its impact on safety, navigation, and other security activities, must be considered.

One commenter stated that the monitoring requirements in § 104.285 conflict with crew rest periods necessary for the safe operation of the vessel.

We do not believe that § 104.285 conflicts with rest periods for crewmembers. It is the vessel owner's or operator's responsibility to ensure that manning levels are sufficient to implement the approved Vessel Security Plan at all MARSEC Levels. There are various ways to meet this requirement, including not operating the vessel at higher MARSEC Levels or limiting vessel operational hours, to ensure crew rest periods are maintained.

After further review of § 104.285(c)(5), we amended this paragraph to clarify that vessel owners or operators may need to include more than one of the additional security measures listed at MARSEC Level 2.

Three commenters suggested that we amend § 104.290(a)(1) to revise ''Prohibiting'' to read ''Deter to the best of their ability'' and § 104.290(a)(2) to revise ''Deny'' to read ''Denying access to the best of their ability.''

We disagree with the comments because the suggested changes would erode the level of security to be achieved by the regulations by providing an unenforceable standard.

Three commenters recommended that the notification procedures in § 104.290(a)(5) be amended to conform to 46 U.S.C. 70104 to include procedures for notifying and coordinating with local, State, and Federal authorities, including the Director of the Federal Emergency Management Agency.

We do not believe that it is necessary to amend § 104.290(a)(5) to align with 46 U.S.C. 70104. The statute is met through the AMS Plan, the implementation of which is intended to coordinate proper notification and response with shoreside authorities in the event of a transportation security incident. The COTP, as the Federal Maritime Security Coordinator, is responsible for notifications as discussed in subpart C of part 101.

One commenter asked how the Coast Guard defines ''critical vessel-to-facility interface operations'' that need to be maintained during transportation security incidents.

Section 104.290(a) requires vessel owners or operators to ensure that the Vessel Security Officer and vessel security personnel can respond to threats and breaches of security and maintain ''critical vessel and vessel-to-facility interface operations,'' while paragraph (e) of that section requires non-critical operations to be secured in order to focus response on critical operations. The Coast Guard does not define the critical operations that need to be maintained during security incidents, because these will vary depending on a vessel's physical and operational characteristics, but we do require each vessel to provide its own definition as part of its Vessel Security Plan. Section 104.305(d) requires that they discuss and evaluate in the Vessel Security Assessment report key vessel measures and operations, including operations involving other vessels or facilities.

One commenter suggested that commuter ticket books or badges could serve as a form of required identification for passengers on board ferries.

Personal identification remains a requirement in these regulations as described in § 101.515 to ensure, if needed, the identification of any passenger. A ticket book or badge that meets the requirements of § 101.515 could serve as personal identification. To ease congestion for ferry passengers, we have included alternatives to checking personal identification as described in § 104.292. These alternatives, if used, can expedite access

to the ferry while maintaining adequate security.

After further review, we amended § 104.292(d)(3) and § 104.292(e) to clarify which screening requirements the alternatives are replacing. We also added a requirement to § 104.292 for vessels using public access facilities, as that term is defined in part 101. These vessels must also address security measures for the interface with the public access facility. These amendments may be found in § 104.292(e)(3) and (f).

Two commenters requested that we amend § 104.297(c) to read ''port or place'' where a vessel owner or operator may have a vessel inspected, stating that many inspections do not take place in a port.

We believe that § 104.297(c) does not preclude a vessel from being inspected in a place other than a port. It is common industry practice for some inspections to take place in locations other than ports, and we do not believe the language in § 104.297(c) alters that practice.

Two commenters asked about the provisions in § 104.297 relating to the issuance of an ISSC to vessels on international voyages. One commenter recommended that an ISSC be issued to all ships as evidence of approval of a Vessel Security Plan, stating the issuance of a Vessel Security Plan letter of approval and an ISSC seems duplicative. One commenter also recommended that the inspection required in § 104.297(c) be combined with Certificate of Inspection examinations and that the ISSC be renewed as part of the Certificate of Inspection examinations.

We disagree that issuance of the Vessel Security Plan letter and an ISSC is duplicative. The Vessel Security Plan letter is issued by the Marine Safety Center upon review and approval of the Vessel Security Plan. The ISSC is issued by the COTP following verification that the Vessel Security Plan has been implemented on board the specific SOLAS vessel. We do not preclude combining the ISSC renewal examination with the Certificate of Inspection examination, as is currently done for verification and issuance of other international certificates. For non-SOLAS vessels, the verification that the Vessel Security Plan has been implemented on board the vessel will be done in conjunction with the Certificate of Inspection examination or any other regularly scheduled examination, if possible. If the non-SOLAS vessel is uninspected, the verification will occur during a separate examination.

One commenter questioned the need for ship alerting systems for foreign flag vessels and asked the Coast Guard to hold the requirement for ship alerting systems in ''abeyance'' until the question regarding ship-alerting systems could be answered by IMO.

As we noted in the preamble to the temporary interim rule (68 FR 39263) (part 101), the Coast Guard is considering applying ship alerting systems to U.S. domestic vessels not subject to SOLAS. Ship alerting systems for foreign flag vessels and U.S. flag vessels subject to SOLAS will be required by SOLAS amendment XI–2 (regulation 6). This comment, therefore, is beyond the scope of this regulation.

One commenter suggested that the temporary interim rule for Vessel Security incorrectly stated that the vessel must maintain and update the continuous synopsis record, contending that this is the flag administration's responsibility.

SOLAS Chapter XI–1, regulation 5, requires flag administrations to issue continuous synopsis records to vessels. Flag administrations must also update the continuous synopsis record based on information provided by the company or vessel. The flag administration must then issue these updated continuous synopsis records to the vessel. To enable flag administrations to perform this function, regulation 5 clearly requires the vessel owner or operator to provide the flag administration current information so that the continuous synopsis record can provide an accurate, on board record of the history of the vessel.

One commenter asked that the Coast Guard articulate how the continuous synopsis record is going to be provided to those vessels that may be subject to Port State Control outside the U.S. where other governments will be looking for one document, not a combination of the Certificate of Documentation and a Certificate of Inspection.

SOLAS Chapter XI–1, regulation 5, requires that the continuous synopsis record be in the format developed by the IMO. The IMO has not developed a format yet. We will comply with the IMO format once it has been adopted. We intend to issue a continuous synopsis record before July 2004. The currency of the information will be based primarily on the information provided by the owner or operator. Sanctions can be imposed for any inaccurate information provided by the owner or operator.

Two commenters encouraged the formal training of Coast Guard Port State Control officers in enforcing these regulations to include the details of security systems and procedures, security equipment, and the elements of knowledge required of the Vessel Security Officer and Facility Security Officer.

The Coast Guard conducts comprehensive training of its personnel involved in ensuring the safety and security of facilities and commercial vessels. We continually update our curriculum to encompass new requirements, such as the Port State Control provisions of the ISPS Code. This training, however, is beyond the scope of this rule.

Subpart C–Vessel Security Assessment (VSA)

This subpart describes the content and procedures for Vessel Security Assessments.

We received 22 comments pertaining to sensitive security information and its disclosure. Twelve commenters requested that the Coast Guard delete the requirements that the Facility Security Assessment or Vessel Security Assessment be included in the submission of the Facility Security Plan or Vessel Security Plan respectively, stating that the security assessments are of such a sensitive nature that risk of disclosure is too great. Four commenters stated that form CG–6025 ''Facility Vulnerability and Security Measures Summary'' should be sufficient for the needs of the Coast Guard and would promote facility security. Two commenters stated that there are too many ways for the general public to gain access to sensitive security information. One commenter stated that it was not clear how the Coast Guard would safeguard sensitive security information. One commenter stated that training for personnel in parts of the Facility Security Plan should not require access to the Facility Security Assessment.

Sections 104.405, 105.405, and 106.405 require that the security assessment report be submitted with the respective security plans. We believe that the security assessment report must be submitted as part of the security plan approval process because it is used to determine if the security plan adequately addresses the security requirements of the regulations. The information provided in form CG–6025 will be used to assist in the development of AMS Plans. The security assessments are not required to be submitted. To clarify that the report, not the assessment, is what must be submitted with the Vessel or Facility Security Plan, we are amending § 104.305 to add the word ''report''

where appropriate. We have also amended §§ 105.305 and 106.305 for facilities and OCS facilities, respectively. Additionally, we have amended these sections so that the Facility Security Assessment report requirements mirror the Vessel Security Assessment report requirements. All of these requirements were included in our original submission to OMB for ''Collection of Information'' approval, and there is no associated increase in burden in our collection of information summary. We also acknowledge that security assessments and security assessment reports have sensitive security information within them, and that they should be protected from unauthorized access under §§ 104.400(c), 105.400(c), and 106.400(c). Therefore, we are amending §§ 104.305, 105.305, and 106.305 to clarify that all security assessments, security assessment reports, and security plans need to be protected from unauthorized disclosure. The Coast Guard has already instituted measures to protect sensitive security information, such as security assessment reports and security plans, from disclosure.

Ten commenters addressed the disclosure of security plan information. One commenter seemed to advocate making security plans public. One commenter was concerned that plans will be disclosed under the Freedom of Information Act (FOIA). One commenter requested that mariners and other employees whose normal working conditions are altered by a Vessel or Facility Security Plan be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because of past experience with State laws that require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter is particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of possible State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is generally exempt from disclosure under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

Information designated as sensitive security information is generally exempt under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public.

Two commenters stated that our regulations suggest that information designated as sensitive security information is exempt from FOIA. One commenter suggested that all documentation submitted under this rule be done pursuant to the Homeland Security Act of 2002, to afford a more legally definite protection against disclosure.

''Sensitive security information'' is a designation mandated by regulations promulgated by TSA and may be found in 49 CFR part 1520. These regulations state that information designated as sensitive security information may not be shared with the general public. FOIA exempts from its mandatory release provisions those items that other laws forbid from public release. Thus, security assessments, security assessment reports, and security plans, which should be designated as sensitive security information, are all exempt from release under FOIA.

One commenter stated that the owners and operators of commercial vessels do not have the resources for additional work and paperwork requirements, believing that the rule will drive some owners and operators out of business.

The MTSA requires the owners or operators of vessels that may be involved in a transportation security incident to develop and implement security plans for their vessels. While these regulations will result in an increased burden for much of the maritime industry, we believe the rules are necessary to ensure maritime homeland security. We have developed these regulations to be as flexible as possible in their implementation, including allowing Alternative Security Programs and equivalencies, while still ensuring maritime security.

Six commenters suggested that a template for security assessments and plans be provided for affected entities. One commenter specifically asked for guidance templates for barge fleeting facilities.

We intend to develop guidelines for the development of security assessments and plans. Additionally, the regulations allow owners and operators of facilities and vessels to implement Alternative Security Programs. This allows owners and operators to participate in a development process with other industry groups, associations, or organizations. We anticipate that one such Alternative Security Program will include a template for barge fleeting facilities.

We received four comments regarding the use of third party companies to conduct security assessments. Two commenters asked if we will provide a list of acceptable assessment companies because of the concern that the vulnerability assessment could ''fall into the wrong hands.'' One commenter requested that the regulations define ''appropriate skills'' that a third party must have in order to aid in the development of security assessments. One commenter stated that the person or company conducting the assessment might not be reliable.

We will not be providing a list of acceptable assessment companies, nor will we define ''appropriate skills.'' It is the responsibility of the vessel or facility owner or operator to vet companies that assist them in their security assessments. In the temporary interim rule (68 FR 39254) (part 101), we stated, ''we reference ISPS Code, part B, paragraph 4.5, as a list of competencies all owners and operators should use to guide their decision on hiring a company to assist with meeting the regulations. We may provide further guidance on competencies for maritime security organizations, as necessary, but do not intend to list organizations, provide standards within the regulations, or certify organizations.'' We require security assessments to be protected from unauthorized disclosures and will enforce this requirement,

including through the penalties provision, § 101.415.

We received three comments regarding the use of RSOs. Two commenters asked whether an RSO could complete a Vessel Security Assessment. One commenter stated that there is a good deal of confusion concerning the fact that an RSO may audit a Vessel Security Assessment and a Vessel Security Plan but cannot actually perform the assessment.

The Coast Guard is not designating any RSOs and will be approving and verifying implementation of all Vessel Security Plans. As provided in § 104.300(c), third parties may be used in any aspect of the Vessel Security Assessment if they have the appropriate skills and if the Company Security Officer reviews and accepts their work. The regulations do not prohibit any third party, including entities that have RSO status abroad, from performing an assessment or audit. However, the regulations prohibit a third party or any person responsible for implementing any security measures in the Vessel Security Plan from performing required audits. It should be noted that the ISPS Code prohibits an RSO that is involved in developing a Vessel Security Plan from reviewing or approving, on behalf of an Administration, the Vessel Security Plan.

Four commenters requested that the Company and the Facility Security Officers be given access to the ''vulnerability assessment'' done by the COTP to facilitate the development of the Facility Security Plan and ensure that the Facility Security Plan does not conflict with the AMS Plan.

The AMS Assessments directed by the Coast Guard are broader in scope than the required Facility Security Assessments. The AMS Assessment is used in the development of the AMS Plan, and it is a collaborative effort between Federal, State, Indian Tribal and local agencies as well as vessel and facility owners and operators and other interested stakeholders. The AMS Assessments are sensitive security information. Access to these assessments, therefore, is limited under 49 CFR part 1520 to those persons with a legitimate need-to-know (*e.g.*, Facility Security Officers who need to align Facility Security Plans with the AMS Plan may be deemed to have need to know sensitive security information). In addition, the Coast Guard will identify potential conflicts between security plans and the AMS Plan during the Facility Security Plan approval process.

One commenter asked whether persons who have already completed the ''ISPS—Company Security Officers Course'' can be considered competent to carry out a shipboard assessment.

The owner or operator of a vessel may rely upon third parties to conduct the Vessel Security Assessment. Section 104.300(d) lists the areas in which anyone involved in a Vessel Security Assessment must have knowledge. While we have not examined the ''ISPS—Company Security Officers Course'' to determine whether it provides adequate training in the areas listed in § 104.300(d), an owner or operator may make that determination on their own in light of the regulatory and international competency requirements.

One commenter asked for clarification of the terms ''self assessments,'' ''security assessments,'' ''risk/threat assessments,'' and ''on-scene surveys.''

Risk/threat assessments and self assessments are not specifically defined in the regulations, but refer to the general practices of assessing where a vessel or facility is at risk. The assessments required in parts 104 through 106 must take into account threats, consequences, and vulnerabilities; therefore, they are most appropriately titled ''security assessments.'' This title also aligns with the ISPS Code. To clarify that §§ 101.510 and 105.205 address security assessments required by subchapter H, we have amended these sections to change the term ''risk'' to the more accurate term ''security.'' ''On-scene surveys'' are explained in the security assessment requirements of parts 104, 105, and 106. As explained in § 104.305(b), for example, the purpose of an on-scene survey is to ''verify or collect information'' required to compile background information and ''consists of an actual survey that examines and evaluates existing vessel protective measures, procedures, and operations.'' An on-scene survey is part of a security assessment.

Three commenters asked how a company should assess the ''worse-case scenario'' regarding barges and their cargo.

There are various methods of conducting a security assessment, several of which we outlined in § 101.510. These assessment tools, the assessment requirements themselves as discussed in §§ 104.305, 105.305, and 106.305, and other assessment tools that have been developed by industry should enable owners or operators to evaluate the vulnerability and potential consequences of a transportation security incident involving the barge or the cargo it carries.

Two commenters asserted that the requirement in § 104.305(b) for an on-scene survey to be complete and plan submitted 60 days in advance of the vessel's operation is not reasonable because the vessel's crew and equipment may not yet be on board or installed.

We recognize the requirements of § 104.305(b) may pose challenges for owners and operators that intend to put their vessels into service after July 1, 2004. We believe the elements of a Vessel Security Assessment, as listed in § 104.305(a), can be addressed before the vessel comes into full operation. The purpose of part 104 is to ensure that an effective Vessel Security Plan is implemented before interfacing with facilities or other vessels. It would be imprudent to allow vessels to enter into service without Vessel Security Plans in place. Therefore, we have not amended this requirement and will only allow vessels to operate upon verification of the implementation of an approved Vessel Security Plan.

Three commenters requested that the Coast Guard amend preamble language to clarify which personnel may conduct a Vessel Security Assessment, stating that we were not clear in the temporary interim rule (68 FR 39240) (part 101).

As provided in § 104.210(a)(4), the Company Security Officer may delegate duties required in part 104, including conducting Vessel Security Assessments. The Company Security Officer remains responsible for the performance of all security-related duties, even when delegated. Under § 104.300(c), third parties may work on a Vessel Security Assessment so long as the Company Security Officer reviews and accepts their work.

One commenter noted that § 104.305(d)(2) requires that the Vessel Security Assessment report address, among other things, the structural integrity of the vessel, and that the implications of this requirement is that we will have non-naval architects commenting on the structural integrity of vessels built under existing rules and regulations. The commenter does not believe that there are counter-measures available for perceived shortcomings in the ship's construction standards and also asks if the Coast Guard anticipates using Vessel Security Assessments as a basis for proposals to amend SOLAS construction standards. Two commenters noted that, although required to assess their vulnerability of approaching recreational boats that may pose harm, vessels are not equipped to react to such a threat.

The provisions of § 104.305(d)(2) align with the ISPS Code, part B. The owner or operator is responsible for the Vessel Security Assessment and,

therefore, may have a naval architect or other qualified professional evaluate the structural integrity of the vessel in conducting the assessment. If, in evaluating the structural integrity of a vessel, the owner or operator determines that no security measures are available for perceived shortcomings in the ship's structural integrity, then the plan will not be required to contain any. We do not, at this time, anticipate using the Vessel Security Assessment as a basis for proposing amendments to SOLAS construction standards. With regard to approaching recreational boats, at higher MARSEC Levels, the owner or operator must implement appropriate security measures if the vessel is at risk from such a threat, such as changing operational schedule, using watercraft as a deterrence or coordinating with the facility for such use, or notifying the COTP or the NRC of a specific threat.

After further review of subpart C of parts 104, 105, and 106, we amended §§ 104.310, 105.310, and 106.310 to state that the security assessment must be reviewed and updated each time the security plan is revised and when the security plan is submitted for re-approval.

Subpart D—Vessel Security Plan (VSP)

This subpart describes the content, format, and processing for Vessel Security Plans.

Two commenters asked the Coast Guard to change the language in § 104.400(a) to delineate the responsibilities of towing vessels and facilities when dealing with unmanned vessels.

We are amending the definition of ''owner or operator'' in § 101.105 to clarify when ''operational control'' of unmanned vessels passes between vessels and facilities. No change was made to § 104.400(a) because the change to the definition of ''owner or operator'' addresses this concern.

One commenter suggested the Coast Guard change the definition of Vessel Security Plan to read verbatim from the MTSA.

Our definition of Vessel Security Plan is consistent with the MTSA, and we believe that it provides clarity on the purpose of the plan.

One commenter stated that Vessel Security Plans should contain a statement recognizing the authority of the Coast Guard to require security measures to deter a transportation security incident and acknowledging that the owner or operator will ensure, by contract or other approved means, the availability of the particular security measures when and if specifically designated and required by the Coast Guard.

The MTSA provided the authority for us to require additional security; however, the Vessel Security Plan need not contain a statement recognizing the authority of the Coast Guard. Under § 104.240(b)(1), we state that the vessel owner or operator must ensure that whenever a higher MARSEC Level is set for the port in which the vessel is located or is about to enter, the vessel complies, without undue delay, with all measures specified in the Vessel Security Plan. Section 104.240(e) requires that, at MARSEC Level 3, the owner or operator must be able to implement additional security measures. The Vessel Security Plan need only describe how the owner or operator will meet the requirements in § 104.240; the statement ''by contract or other approved means'' is not required.

One commenter stated that as part of developing a Vessel Security Plan, the commenter would have to contract, in advance, with shore-based companies for security measures and anti-terrorism services.

Nothing in these regulations requires that vessel owners or operators contract for such services in advance. However, if an owner or operator of a vessel develops and has approved a Vessel Security Plan that states it will hire shore-based companies to provide certain security measures, then the vessel owner or operator must be prepared to demonstrate that the plan can be implemented as approved. It is the intent of these regulations that vessel owners or operators, in accordance with their Vessel Security Assessments, identify those resources they will need at the various MARSEC Levels to ensure that they can implement their Vessel Security Plans.

One commenter recommended that a ''working language'' provision be added to the regulation to ensure that the Vessel Security Plan is understood by the crew that is responsible for its implementation. One commenter recommended that the Coast Guard amend the requirements of part 104 to include a provision to encourage foreign vessels to carry a copy of their Vessel Security Plan written in English. This commenter believed that Coast Guard Port State Control officers may be delayed when they encounter a Vessel Security Plan written in a language other than English.

We agree that a plan written in a language other than English may cause a delay during a Port State Control examination. However, we believe that all vessel personnel must have knowledge of security-related measures as specified in the Vessel Security Plan. We agree, therefore, that providing the Vessel Security Plan or sections of the Vessel Security Plan in the working language of the crew is good maritime practice. While we require that the Vessel Security Plan be submitted in English, we are amending § 104.400 to also encourage the owner or operator of a vessel to provide a translation in the working language of the crew to ensure that vessel personnel can perform their security duties. We are also amending § 104.410 to clarify that we require Vessel Security Plans to be submitted to the MSC in English. Additionally, to meet our international obligations we do not require that foreign vessels carry on board the vessel a copy of its Vessel Security Plan written in English. Part A of the ISPS Code permits Vessel Security Plans to be written in the working language or languages of the ship, so long as a translation of the plan is provided in English, Spanish, or French. As we stated in the preamble of the temporary interim rule (68 FR 39297) (part 101), a vessel may be delayed while translator services are acquired when a Port State Control officer is presented a Vessel Security Plan in a language that he or she does not understand. Although not required, it would help our Port State Control efforts if the plan were maintained in English as well.

One commenter recommended that the provisions for the MTSA, requiring Vessel Security Plans to be consistent with the National and AMS Plans, be waived until both of these plans exist.

We cannot waive a legislative requirement without express authority to do so. However, we do not anticipate that Vessel Security Plans or Facility Security Plans will need to be resubmitted or revised when the National and AMS Plans are developed. We view the regulatory requirements for Vessel Security Plans and Facility Security Plans to be the fundamental building blocks for these broader plans.

One commenter stated that an outline for Vessel Security Plans should be provided similar to the one in § 105.405 for Facility Security Plans.

We believe that the format for the Vessel Security Plans provided in § 104.405 is complete and differs little from the one provided in § 105.405.

Three commenters recommended that the regulations be amended to close ''the gap'' in the plan-approval process to address the period of time between December 29, 2003, and July 1, 2004. Another commenter suggested submitting the Facility Security Plan for review and approval for a new facility

''within six months of the facility owner or operator's intent of operating it.''

We agree that the regulations do not specify plan-submission lead time for vessels, facilities, and OCS facilities that come into operation after December 29, 2003, and before July 1, 2004. The owners or operators of such vessels, facilities, and OCS facilities are responsible for ensuring they have the necessary security plans submitted and approved by July 1, 2004, if they intend to operate. We have amended §§ 104.410, 105.410, and 106.410 to clarify the plan-submission requirements for before and after July 1, 2004.

One commenter suggested that the Coast Guard amend § 104.410(a) to read: ''each vessel owner or operator, where required, must either'' instead of ''each vessel owner or operator must either.''

We disagree with the comment because we feel that the current language best conveys the intent of the regulation. We believe that it is clear that this part is applicable only to those owners or operators who are required to submit a security plan.

After further review of the ''Submission and approval'' requirements in §§ 101.120, 104.410, 105.410, and 106.410, we have amended the requirements to clarify that security plan submissions can be returned for revision during the approval process.

Thirty commenters commended the Coast Guard for providing an option for an Alternative Security Program as described in § 101.120(b) and urged the Coast Guard to approve these programs as soon as possible.

We believe the provisions in § 101.120(b) will provide greater flexibility and will help owners and operators meet the requirements of these rules. We will review Alternative Security Program submissions in a timely manner to determine if they comply with the security regulations for their particular segment. Additionally, we have amended §§ 104.410(a)(2), 105.410(a)(2), 106.410(a)(2), 105.115(a), and 106.110(a) to clarify the submission requirements for the Alternative Security Program.

We received 15 comments about the process of amending and updating the security plans. Five commenters requested that they be exempted from auditing whenever they make minimal changes to the security plans. Two commenters stated that it should not be necessary to conduct both an amendment review and a full audit of security plans upon a change in ownership or operational control. Three commenters requested a *de minimis* exemption to the requirement that security plans be audited whenever there are modifications to the vessel or facility. Seven commenters stated that the rule should be revised to allow the immediate implementation of security measures without having to propose an amendment to the security plans at least 30 days before the change is to become effective. The commenters stated that there is something ''conceptually wrong'' with an owner or operator having to submit proposed amendments to security plans for approval when the amendments are deemed necessary to protect vessels or facilities.

The regulations require that upon a change in ownership of a vessel or facility, the security plan must be audited and include the name and contact information of the new owner or operator. This will enable the Coast Guard to have the most current contact information. Auditing the security plan is required to ensure that any changes in personnel or operations made by the new owner or operator do not conflict with the approved security plan. The regulations state that the security plan must be audited if there have been significant modifications to the vessel or facility, including, but not limited to, their physical structure, emergency response procedures, security measures, or operations. These all represent significant modifications. Therefore, we are not going to create an exception in the regulation. We recognize that the regulations requiring that proposed amendments to security plans be submitted for approval 30 days before implementation could be construed as an impediment to taking necessary security measures in a timely manner. The intent of this requirement is to ensure that amendments to the security plans are reviewed to ensure they are consistent with and supportable by the security assessments. It is not intended to be, nor should it be, interpreted as precluding the owner or operator from the timely implementation of additional security measures above and beyond those enumerated in the approved security plan to address exigent security situations. Accordingly we have amended §§ 104.415, 105.415, and 106.415 to add a clause that allows for the immediate implementation of additional security measures to address exigent security situations.

One commenter stated that vessel owners and operators should be allowed to amend Vessel Security Plans through annual letters to the Coast Guard, stating that Vessel Security Plans should be living documents that can be readily changed to reflect audit findings and lessons learned from drills and exercises. One commenter requested a definition for the scope of a plan change that constitutes an amendment to a Vessel Security Plan.

We agree that the Vessel Security Plan is a living document that should be continuously updated to incorporate changes or lessons learned from drills and exercises, and the regulations currently allow for frequent audit and amendments. We believe, however, that any changes to Vessel Security Plans should be submitted to the Coast Guard as soon as practicable, which may require more than an annual letter. In addition, we require that vessel owners and operators submit changes to the Marine Safety Center for review 30 days before the change becomes effective to ensure changes are consistent with the regulations.

Five commenters asked about the need for independent auditors under §§ 104.415 and 105.415. Two commenters recommended that we amend § 105.415(b)(4)(ii) to read ''not have regularly assigned duties for that facility'' as this would allow flexibility for audits to be conducted by individuals with security-related duties as long as those duties are not at that facility.

We believe that independent auditors are one, but not the only, way to conduct audits of Facility Security Plans. In both §§ 104.415 and 105.415, paragraph (b)(4) lists three requirements for auditors that, for example, could be met by employees of the same owner or operator who do not work at the facility or on the vessel where the audit is being conducted. Additionally, paragraph (b)(4) states that all of these requirements do not need to be met if impracticable due to the facility's size or the nature of the company.

Miscellaneous

Two commenters recommended that the regulations be amended to clarify the authority of the cognizant Officer in Charge of Marine Inspection to issue the ISSC to qualifying vessels.

To clarify this authority, we have added 46 CFR 2.01–25(a)(2)(viii).

After further review of this part we made several non-substantive editorial changes, such as adding plurals and fixing noun, verb, and subject agreements. These sections include: §§ 104.200(b)(14)(i), 104.215(a)(3), 104.265(b)(1) and (c)(5), 104.270(b)(5), 104.285(a)(1)(i), and 104.305(d)(3)(iv). In addition, the part heading in this part has been amended to align with all the part headings within this subchapter.

Regulatory Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of

Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final assessment is available in the docket as indicated under **ADDRESSES**. A summary of comments on the assessment, our responses, and a summary of the assessment follow.

Five commenters stated that our cost estimates understate the cost for international ships calling on U.S. ports. Three commenters noted that the same parameters used to develop the costs for the U.S. SOLAS ships should be extrapolated and applied to international ships, adjusted for the time these ships spend in U.S. waters. One commenter asked us to explain why only 70 foreign flag vessels were included in our analysis of the cost of the temporary interim rule.

We disagree with the commenters' assertion that our estimate understates the cost for international ships calling on U.S. ports. We developed our estimate assuming that foreign flag vessels subject to SOLAS would be required by their flag state, as signatories to SOLAS, to implement SOLAS and the ISPS Code. The flag administrations of foreign flag SOLAS vessels will account, therefore, for the costs of complying with SOLAS and the ISPS Code. Our analysis accounts for the costs of this rule to U.S. flag vessels subject to SOLAS. Additionally, we estimate costs for the approximately 70 foreign flag vessels that are not subject to SOLAS that would not need to comply with either SOLAS or the ISPS Code. These vessels must comply with the requirements in 33 CFR part 104 if they wish to continue operating in U.S. ports after July 1, 2004, and we therefore estimate the costs to these vessels.

One commenter suggested that cost assessments for auditing the Vessel Security Assessment and Vessel Security Plan be revisited, stating that the present 15-minute cost estimate to update the Vessel Security Plan did not account for the expense of an annual review and audit.

The estimated average incremental cost for the 15-minute update of the Vessel Security Plan accounts for the time a Company Security Officer or Vessel Security Officer spends making minor changes. The cost of an annual review and audit cost is incurred at the company, not the vessel, level. We have accounted for this cost for both large and small companies. We also assumed that, for large companies operating vessels subject to SOLAS, the cost would be incremental to existing expenses for annual audits already required under the International Safety Management Code and other international instruments. For further detail on the cost calculations, see the Cost Assessment and Final Regulatory Flexibility Act analysis in the docket for this rule.

One commenter suggested taking into greater account the risk factors of the facility and vessel as a whole, rather than simply relying on one factor, such as the capacity of a vessel as well as the cost-benefit of facility security to all of the business entities that make up a facility.

The Coast Guard considered an extensive list of risk factors when developing these regulations including, but not limited to, vessel and facility type, the nature of the commerce in which the entity is engaged, potential trade routes, accessibility of facilities, gross tonnage, and passenger capacity. Our Cost Assessments and Regulatory Flexibility Act Analyses for both the temporary interim rules and the final rules are available in the docket, and they account for companies as whole business entities, not individual vessels or facilities.

Cost Assessment

For the purposes of good business practice or pursuant to regulations promulgated by other Federal and State agencies, many companies already have spent a substantial amount of money and resources to upgrade and improve security. The costs shown in this assessment do not include the security measures these companies have already taken to enhance security. Because the changes in this final rule do not affect the original cost estimates presented in the temporary interim rule (68 FR 39298) (part 104), the costs remain unchanged.

We realize that every company engaged in maritime commerce would not implement the final rule exactly as presented in this assessment. Depending on each company's choices, some companies could spend much less than what is estimated herein while others could spend significantly more. In general, we assume that each company would implement the final rule based on the type of vessels or facilities it owns or operates and whether it engages in international or domestic trade.

This assessment presents the estimated cost if vessels are operating at MARSEC Level 1, the current level of operations since the events of September 11, 2001. We also estimated the costs for operating for a brief period at MARSEC Level 2, an elevated level of security.

We do not anticipate that implementing the final rule will require additional manning on board vessels; existing personnel can assume the duties envisioned.

The final rule will affect about 10,300 U.S. flag SOLAS and domestic (non-SOLAS) vessels, and about 70 foreign non-SOLAS vessels.

The estimated cost of complying with the final rule is present value $1.368 billion (2003–2012, 7 percent discount rate). Approximately present value $248 million of this total is attributable to U.S. flag SOLAS vessels. Approximately present value $1.110 billion is attributable to domestic vessels (non-SOLAS), and present value $10 million is attributable to foreign non-SOLAS vessels. In the first year of compliance, the cost of purchasing equipment, hiring security officers, and preparing paperwork is an estimated $218 million (non-discounted, $42 million for the U.S. flag SOLAS fleet, $175 million for the domestic fleet, $1 million for the foreign non-SOLAS fleet). Following initial implementation, the annual cost of compliance is an estimated $176 million (non-discounted, $32 million for the U.S. flag SOLAS fleet, $143 million for the domestic fleet, $1 million for the foreign non-SOLAS fleet).

For the U.S. flag SOLAS fleet, approximately 52 percent of the initial cost is for hiring Company Security Officers and training personnel, 29 percent is for vessel equipment, 12 percent is for assigning Vessel Security Officers to vessels, and 7 percent is associated with paperwork (Vessel Security Assessment and Vessel Security Plan). Following the first year, approximately 72 percent of the cost is for Company Security Officers and personnel training, 3 percent is for vessel equipment, 10 percent is for drilling, 15 percent is for Vessel Security Officers, and less than 1 percent is associated with paperwork. Company Security Officers and training are the primary cost drivers for U.S. flag SOLAS vessels.

For the domestic fleet, approximately 51 percent of the initial cost is for hiring Company Security Officers and training personnel, 29 percent is for vessel equipment, 14 percent is for assigning Vessel Security Officers to vessels, and 6 percent is associated with paperwork (Vessel Security Assessments and Vessel Security Plans). Following the first year, approximately 61 percent of the cost is for Company Security Officers and training, 6 percent is for vessel equipment, 11 percent is for

drilling, 22 percent is for VSOs, and less than 1 percent is associated with paperwork. As with SOLAS vessels, Company Security Officers are the primary cost driver for the domestic fleet.

We estimated approximately 135,000 burden hours for paperwork during the first year of compliance (33,000 hours for U.S. flag SOLAS, 101,000 hours for the domestic fleet, 1,000 hours for the foreign non-SOLAS fleet). We estimated approximately 12,000 burden hours annually following full implementation of the final rule (2,000 hours for U.S. flag SOLAS, 10,000 hours for the domestic fleet, less than 1,000 hours for the foreign non-SOLAS fleet).

We also estimated the annual cost for going to an elevated security level, MARSEC Level 2, in response to increased threats. The duration of the increased threat level will be entirely dependent on intelligence received. For this assessment, we estimated costs for MARSEC Level 2 using the following assumptions: All ports will go to MARSEC Level 2 at once, each elevation will last 21 days, and the elevation will occur twice a year. The estimated cost associated with these conditions is $235 million annually.

Benefit Assessment

This final rule is one of six final rules that implement national maritime security initiatives concerning general provisions, Area Maritime Security, vessels, facilities, Outer Continental Shelf (OCS) facilities, and AIS. The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to ''Applicability of National Maritime Security Initiatives'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a ''family'' of rules that will reinforce and support one another in their implementation. We have ensured, however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to ''Benefit Assessment'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39274) (part 101).

We determined annual risk points reduced for each of the six final rules using the N–RAT. The benefits are apportioned among the Vessel, Facility, OCS Facility, AMS, and AIS requirements. As shown in Table 1, the implementation of vessel security for the affected population reduces 781,285 risk points annually through 2012. The benefits attributable for part 101, General Provisions, were not considered separately since it is an overarching section for all the parts.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by final fule				
	Vessel security	Facility security	OCS Facility security	AMS	AIS
Vessels	778,633	3,385	3,385	3,385	1,317
Facilities	2,025	469,686	.....	2,025	.....
OCS Facilities	41	.....	9,903	.....	.....
Port Areas	587	587	.....	129,792	105
Total	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented the cost effectiveness, or dollars per risk point reduced, in two ways: First, we compared the first-year cost and first-year benefit because first-year cost is the highest in our assessment as companies develop security plans and purchase equipment. Second, we compared the 10-year present value cost and the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES

Item	Final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS*
First-Year Cost (millions)	$218	$1,125	$3	$120	$30
First-Year Benefit	781,285	473,659	13,288	135,202	1,422
First-Year Cost Effectiveness ($/Risk Point Reduced)	279	2,375	205	890	21,224
10-Year Present Value Cost (millions)	1,368	5,399	37	477	26
10-Year Present Value Benefit	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year Present Value Cost Effectiveness ($/Risk Point Reduced)	233	1,517	368	469	2,427

*Cost less monetized safety benefit.

Small Entities

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

We found that the facilities (part 105), vessels (part 104), and AIS rules may have a significant impact on a substantial number of small entities. However, we were able to certify no significant economic impact on a substantial number of small entities for the Area Maritime Security (part 103) and OCS facility security (part 106) rules. A complete small entity analysis may be found in the ''Cost Assessment and Final Regulatory Flexibility Analysis'' for these rules.

We received comments regarding small entities; these comments are discussed within the ''Discussion of Comments and Changes'' section of this final rule.

U.S. Flag SOLAS Vessels.

We estimated that 88 companies that own U.S. flag SOLAS vessels will be affected by the final rule. We researched these companies and found revenue data for 32 of them (36 percent). The revenue impacts for these vessels are presented in Table 3. In this analysis, we considered the impacts to small businesses during the first year of implementation, when companies will be conducting assessments, developing security plans, and purchasing equipment. We also considered annual revenue impacts following the first year, when companies will have the assessments and plans complete, but will need to conduct quarterly drilling.

TABLE 3.—ESTIMATED REVENUE IMPACTS FOR SMALL BUSINESSES THAT OWN U.S. FLAG SOLAS VESSELS

Percent impact on annual revenue	Initial		Annual	
	Number of small entities with known revenue data	Percent of small entities with known revenue data	Number of small entities with known revenue data	Percent of small entities with known revenue data
0–3	8	25	8	25
3–5	3	9	3	9
5–10	1	3	4	13
10–20	6	19	4	13
20–30	4	13	3	9
30–40	1	3	2	6
40–50	3	9	2	6
> 50	6	19	6	19
Total	32	100	32	100

We assume that the remaining 56 entities that did not have revenue data are very small businesses. We assume that the final rule may have a significant economic impact on these businesses.

Domestic Vessels

We estimated that 1,683 companies that own domestic vessels will be affected by the final rule. We researched these companies and found revenue data for 822 of them (49 percent). The revenue impacts for these vessels are presented in Table 4. As with U.S. flag SOLAS vessels, we considered the impacts to small businesses during the first year of implementation, when companies will be conducting assessments, developing security plans, and purchasing equipment. We also considered annual revenue impacts following the first year, when companies will have the assessments and plans complete, but will need to conduct quarterly drilling.

TABLE 4.—ESTIMATED REVENUE IMPACTS FOR SMALL BUSINESSES THAT OWN DOMESTIC VESSELS

Percent impact on annual revenue	Initial		Annual	
	Number of small entities with known revenue data	Percent of small entities with known revenue data	Number of small entities with known revenue data	Percent of small entities with known revenue data
0–3	366	45	393	48
3–5	86	10	87	11
5–10	171	21	170	21
10–20	85	10	64	8
20–30	34	4	37	5
30–40	19	2	16	2
40–50	9	1	16	2
> 50	52	6	39	5
Total	822	100	822	100

We assumed that the remaining 861 entities that did not have revenue data are very small businesses. We assumed that the final rule may have a significant economic impact on these businesses.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be required to take in order to comply with each respective final rule. We have not created Compliance Guides for part 101 or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

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

Collection of Information

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The final rules are covered by two existing OMB-approved collections—1625–0100 [formerly 2115–0557] and 1625–0077 [formerly 2115–0622].

We received comments regarding collection of information; these comments are discussed within the ''Discussion of Comments and Changes'' section of this preamble. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

Federalism

Executive Order 13132 requires the Coast Guard to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, the Coast Guard may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications and a substantial direct effect on the States. This final rule requires those States that own or operate vessels or facilities that may be involved in a transportation security incident to conduct security assessments of their vessels and facilities and to develop security plans for their protection. These plans must contain measures that will be implemented at each of the three MARSEC Levels and must be reviewed and approved by the Coast Guard.

Additionally, the Coast Guard has reviewed the MTSA with a view to whether we may construe it as non-preemptive of State authority over the same subject matter. We have determined that it would be inconsistent with the federalism principles stated in the Executive Order to construe the MTSA as not preempting State regulations that conflict with the regulations in this final rule. This is because owners or operators of facilities and vessels—that are subject to the requirements for conducting security assessments, planning to secure their facilities and vessels against threats revealed by those assessments, and complying with the standards, both performance and specific construction, design, equipment, and operating requirements—must have one uniform, national standard that they must meet. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they moved from State to State. Therefore, we believe that the federalism principles enumerated by the Supreme Court in *U.S.* v. *Locke*, 529 U.S. 89 (2000) regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulation and control of vessels for security purposes. But, the same considerations apply to facilities, at least insofar as a State law or regulation applicable to the same subject for the purpose of protecting the security of the facility would conflict with a Federal regulation; in other words, it would either actually conflict or would frustrate an overriding Federal need for uniformity.

Finally, it is important to note that the regulations implemented by this final rule bear on national and international commerce where there is no constitutional presumption of concurrent State regulation. Many aspects of these regulations are based on the U.S. international treaty obligations regarding vessel and port facility security contained in SOLAS and the complementary ISPS Code. These international obligations reinforce the need for uniformity regarding maritime commerce.

Notwithstanding the foregoing preemption determinations and findings, the Coast Guard has consulted extensively with appropriate State officials, as well as private stakeholders during the development of this final rule. For these final rules, we met with the National Conference of State Legislatures (NCSL) Taskforce on Protecting Democracy on July 21, 2003, and presented briefings on the temporary interim rules to the NCSL's Transportation Committee on July 23, 2003. We also briefed several hundred State legislators at the American Legislative Exchange Council on August 1, 2003. We held a public meeting on July 23, 2003, with invitation letters to all State homeland security representatives. A few State representatives attended this meeting and submitted comments to a public docket prior to the close of the comment period. The State comments to the docket focused on a wide range of concerns including consistency with international requirements and the protection of sensitive security information.

One commenter stated that there should be national uniformity in implementing security regulations on international shipping.

As stated in the temporary interim rule for part 101 (68 FR 39277), we believe that the federalism principles

enumerated by the Supreme Court in *U.S.* v. *Locke,* 529 U.S. 89 (2000), regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulations and control of vessels for security purposes. It would be inconsistent with the federalism principles stated in Executive Order 13132 to construe the MTSA as not preempting State regulations that conflict with these regulations. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they move from state to state.

One commenter stated that there is a ''real cost'' to implementing security measures, and it is significant. The commenter stated that there is a disparity between Federal funding dedicated to air transportation and maritime transportation and that the Federal government should fund maritime security at a level commensurate with the relative security risk assigned to the maritime transportation mode. Further, the commenter stated that, in 2002, some State-owned ferries carried as many passengers as one of the State's busiest international airports and provided unique mass transit services; therefore, the commenter supported the Alternative Security Program provisions of the temporary interim rule to enable a tailored approach to security.

The viability of a ferry system to provide mass transit to a large population is undeniable and easily rivals other transportation modes. We developed the Alternative Security Program to encompass operations such as ferry systems. We recognize the concern about the Federal funding disparity between the maritime transportation mode and other modes; however, this disparity is beyond the scope of this rule.

One commenter stated that while he appreciated the urgency of developing and implementing maritime security plans, the State would find it difficult to complete them based on budget cycles and building permit requirements. At the briefings discussed above, several NCSL representatives also voiced concerns over the short implementation period. In contrast, other NCSL representatives were concerned that security requirements were not being implemented soon enough.

The implementation timeline of these final rules follows the mandates of the MTSA and aligns with international implementation requirements. While budget-cycle and permit considerations are beyond the scope of this rule, the flexibility of these performance-based regulations should enable the majority of owners and operators to implement the requirements using operational controls, rather than more costly physical improvement alternatives.

Other concerns raised by the NCSL at the briefings mentioned above included questions on how the Coast Guard will enforce security standards on foreign flag vessels and how multinational crewmember credentials will be checked.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, Congress explicitly found that ''it is in the best interests of the U.S. to implement new international instruments that establish'' a maritime security system. We agree and will exercise Port State Control to ensure that foreign vessels have approved plans and have implemented adequate security standards on which these rules are based. If vessels do not meet our security requirements, the Coast Guard may prevent those vessels from entering the U.S. or take other necessary measures that may result in vessel delays or detentions. The Coast Guard will not hesitate to exercise this authority in appropriate cases. We discuss the ongoing initiatives of ILO and the requirements under the MTSA to develop seafarers' identification criteria in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39264) (part 101). We will continue to work with other agencies to coordinate seafarer access and credentialing issues. These final rules will also ensure that vessel and facility owners and operators take an active role in deterring unauthorized access.

One commenter, as well as participants of the NCSL, noted that some State constitutions afford greater privacy protections than the U.S. Constitution and that, because State officers may conduct vehicle screenings, State constitutions will govern the legality of the screening. The commenter also noted that the regulations provide little guidance on the scope of vehicle screening required under the regulations.

The MTSA and this final rule are consistent with the liberties provided by the U.S. Constitution. If a State constitutional provision frustrates the implementation of any requirement in the final rule, then the provision is preempted pursuant to Article 6, Section 2, of the U.S. Constitution. The Coast Guard intends to coordinate with TSA and BCBP in publishing guidance on screening.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This final rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)).

We did not receive comments regarding the Unfunded Mandates Reform Act.

Taking of Private Property

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

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this final rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive comments regarding the protection of children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We did not receive comments regarding Indian Tribal Governments.

Energy Effects

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

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security.

We did not receive comments regarding energy effects.

Environment

We have considered the environmental impact of this final rule and concluded that under figure 2–1, paragraphs (34)(a), (34)(c), and (34)(d), of Commandant Instruction M16475.lD, this final rule is categorically excluded from further environmental documentation. This final rule concerns security assessments, plans, training, and the establishment of security positions that will contribute to a higher level of marine safety and security for vessels and U.S. ports. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION.**

This final rule will not significantly impact the coastal zone. Further, the execution of this final rule will be done in conjunction with appropriate state coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

We did not receive comments regarding the environment.

List of Subjects

33 CFR Part 104

Incorporation by reference, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous material transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirement, Vessels, Waterways.

33 CFR Part 165

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

46 CFR Part 2

Marine safety, Maritime security, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 31

Cargo vessels, Inspection and certification, Maritime security.

46 CFR Part 71

Inspection and certification, Maritime security, Passenger vessels.

46 CFR Part 91

Cargo vessels, Inspection and Certification, Maritime security.

46 CFR Part 115

Fire prevention, Inspection and certification, Marine safety, Maritime security, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 126

Cargo vessels, Inspection and certification, Marine safety, Maritime security, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Inspection, Marine safety, Maritime security, Reporting and recordkeeping requirements, Vessels.

■ Accordingly, the interim rule adding 33 CFR part 104 and amending 33 CFR parts 160 and 165, and 46 CFR parts 2, 31, 71, 91, 115, 126, and 176 that was published at 68 FR 39292 on July 1, 2003, and amended at 68 FR 41915 on July 16, 2003, is adopted as a final rule with the following changes:

33 CFR Chapter I

PART 104—MARITIME SECURITY: VESSELS

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise the heading to part 104 to read as shown above.

■ 3. In § 104.105—

■ a. Revise paragraphs (a)(1) through (a)(10);

■ b. Add new paragraph (a)(11); and

■ c. Revise paragraph (c) to read as follows:

§ 104.105 Applicability.

(a) * * *

(1) Mobile Offshore Drilling Unit (MODU), cargo, or passenger vessel subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS), Chapter XI;

(2) Foreign cargo vessel greater than 100 gross register tons;

(3) Self-propelled U.S. cargo vessel greater than 100 gross register tons subject to 46 CFR subchapter I, except commercial fishing vessels inspected under 46 CFR part 105;

(4) Vessel subject to 46 CFR chapter I, subchapter L;

(5) Passenger vessel subject to 46 CFR chapter I, subchapter H;

(6) Passenger vessel certificated to carry more than 150 passengers;

(7) Other passenger vessel carrying more than 12 passengers, including at least one passenger-for-hire, that is engaged on an international voyage;

(8) Barge subject to 46 CFR chapter I, subchapters D or O;

(9) Barge subject to 46 CFR chapter I, subchapter I, that carries Certain Dangerous Cargoes in bulk, or that is engaged on an international voyage;

(10) Tankship subject to 46 CFR chapter I, subchapters D or O; and

(11) Towing vessel greater than eight meters in registered length that is engaged in towing a barge or barges subject to this part, except a towing vessel that—

(i) Temporarily assists another vessel engaged in towing a barge or barges subject to this part;

(ii) Shifts a barge or barges subject to this part at a facility or within a fleeting facility;

(iii) Assists sections of a tow through a lock; or

(iv) Provides emergency assistance.

* * * * *

(c) Foreign Vessels that have on board a valid International Ship Security

Certificate that certifies that the verifications required by part A, Section 19.1, of the International Ship and Port Facility Security (ISPS) Code (Incorporated by reference, see § 101.115 of this subchapter) have been completed will be deemed in compliance with this part, except for §§ 104.240, 104.255, 104.292, and 104.295, as appropriate. This includes ensuring that the vessel meets the applicable requirements of SOLAS Chapter XI–2 (Incorporated by reference, see § 101.115 of this subchapter) and the ISPS Code, part A, having taken into account the relevant provisions of the ISPS Code, part B, and that the vessel is provided with an approved security plan.

* * * * *

■ 4. Revise § 104.110 to read as follows:

§ 104.110 Exemptions.

(a) This part does not apply to warships, naval auxiliaries, or other vessels owned or operated by a government and used only on government non-commercial service.

(b) A vessel is not subject to this part while the vessel is laid up, dismantled, or otherwise out of commission.

■ 5. Revise § 104.115 to read as follows:

§ 104.115 Compliance dates.

(a) On July 1, 2004, and thereafter, vessel owners or operators must ensure their vessels are operating in compliance with this part.

(b) On or before December 31, 2003, vessel owners or operators not subject to paragraph (c)(1) of this section must submit to the Commanding Officer, Marine Safety Center, for each vessel—

(1) The Vessel Security Plan described in subpart D of this part for review and approval; or

(2) If intending to operate under an approved Alternative Security Program, a letter signed by the vessel owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(c) On July 1, 2004, and thereafter, owners or operators of foreign vessels must comply with the following—

(1) Vessels subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS), Chapter XI, must carry on board a valid International Ship Security Certificate that certifies that the verifications required by part A, Section 19.1, of the International Ship and Port Facility Security (ISPS) Code (Incorporated by reference, see § 101.115 of this subchapter) have been completed. This includes ensuring that the vessel meets the applicable requirements of SOLAS Chapter XI–2 (Incorporated by reference, see § 101.115 of this chapter) and the ISPS Code, part A, having taken into account the relevant provisions of the ISPS Code, part B, and that the vessel is provided with an approved security plan.

(2) Vessels not subject to SOLAS Chapter XI, may comply with this part through an Alternative Security Program or a bilateral arrangement approved by the Coast Guard. If not complying with an approved Alternative Security Program or bilateral arrangement, these vessels must meet the requirements of paragraph (b) of this section.

■ 6. In § 104.120—

■ a. Revise paragraph (a) introductory text to read as set out below;

■ b. In paragraph (a)(3), after the words ''a copy of the Alternative Security Program the vessel is using'', add the words '', including a vessel specific security assessment report generated under the Alternative Security Program, as specified in § 101.120(b)(3) of this subchapter,''; and

■ c. Revise paragraph (a)(4) to read as follows:

§ 104.120 Compliance documentation.

(a) Each vessel owner or operator subject to this part must ensure, on or before July 1, 2004, that copies of the following documents are carried on board the vessel and are made available to the Coast Guard upon request:

* * * * *

(4) For foreign vessels, subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS), Chapter XI, a valid International Ship Security Certificate (ISSC) that attests to the vessel's compliance with SOLAS Chapter XI–2 and the ISPS Code, part A (Incorporated by reference, see § 101.115 of this subchapter) and is issued in accordance with the ISPS Code, part A, section 19. As stated in Section 9.4 of the ISPS Code, part A requires that, in order for the ISSC to be issued, the provisions of part B of the ISPS Code need to be taken into account.

* * * * *

■ 7. Revise § 104.125 to read as follows:

§ 104.125 Noncompliance.

When a vessel must temporarily deviate from the requirements of this part, the vessel owner or operator must notify the cognizant COTP, and either suspend operations or request and receive permission from the COTP to continue operating.

■ 8. Revise § 104.140(b) to read as follows:

§ 104.140 Alternative Security Programs.

* * * * *

(b) The vessel is not subject to the International Convention for Safety of Life at Sea, 1974; and

* * * * *

■ 9. In § 104.200—

■ a. Revise paragraph (b)(6) to read as set out below; and

■ b. In paragraph (b)(14)(i), at the end of the word ''contractor'', add the letter ''s''.

§ 104.200 Owner or operator.

* * * * *

(b) * * *

(6) Ensure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility of visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with facility operators in advance of a vessel's arrival. Vessel owners or operators may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations in coordinating such leave. The text of these treaties can be found on the U.S. Department of State's Web site at *http://www.state.gov/s/l/24224.htm;*

* * * * *

§ 104.205 [Amended]

■ 10. In § 104.205(b)(1), after the words ''inform the Coast Guard'', add the words ''via the NRC'' and remove the text ''1st-nrcinfo@comdt.uscg.mil'' and add, in its place, the text ''lst-nrcinfo@comdt.uscg.mil''.

§ 104.210 [Amended]

■ 11. In § 104.210(a)(3), after the words ''owner or operator's organization,'' add the words ''including the duties of a Vessel Security Officer,''.

§ 104.215 [Amended]

■ 12. In § 104.215—

■ a. In paragraph (a)(2), after the words ''the VSO must be'', add the words ''the Master or''; and

■ b. In paragraph (a)(3), after the words ''For unmanned vessels,'' add the words ''the VSO must be an employee of the company, and'' and remove the words ''more one than'' and add, in their place, the words ''more than''.

§ 104.225 [Amended]

■ 13. In § 104.225, in the introductory paragraph, after the words ''in the following'' add the words '', as appropriate''.

■ 14. In § 104.230—

■ a. Revise paragraph (a) to read as set out below;

■ b. In paragraph (b)(4), after the word ''week'', add the word ''from''; and

■ c. Add paragraph (b)(5) to read as follows:

§ 104.230 Drill and exercise requirements.

(a) *General.* (1) Drills and exercises must test the proficiency of vessel personnel in assigned security duties at all Maritime Security (MARSEC) Levels and the effective implementation of the Vessel Security Plan (VSP). They must enable the Vessel Security Officer (VSO) to identify any related security deficiencies that need to be addressed.

(2) A drill or exercise required by this section may be satisfied with the implementation of security measures required by the Vessel Security Plan as the result of an increase in the MARSEC Level, provided the vessel reports attainment to the cognizant COTP.

(b) * * *

(5) Not withstanding paragraph (b)(4) of this section, vessels not subject to SOLAS may conduct drills within 1 week from whenever the percentage of vessel personnel with no prior participation in a vessel security drill on a vessel of similar design and owned or operated by the same company exceeds 25 percent.

* * * * *

§ 104.235 [Amended]

■ 15. In § 104.235—

■ a. In paragraph (b)(1), remove the words ''each security training session'' and add, in their place, the words ''training under § 104.225''; and

■ b. In paragraph (b)(8), after the words ''letter certified by'', add the words ''the Company Security Officer or''.

■ 16. In § 104.240—

■ a. In paragraph (a), after the words ''prior to entering a port'', add the words ''or visiting an Outer Continental Shelf (OCS) facility'' and, after the words ''in effect for the port'', add the words ''or the OCS facility'';

■ b. In paragraph (b)(2), remove the word ''and'';

■ c. In paragraph (b)(3), at the end of the paragraph, remove the period and add, in its place, the text ''; and''; and

■ d. Add paragraph (b)(4) to read as follows:

§ 104.240 Maritime Security (MARSEC) Level coordination and implementation.

* * * * *

(b) * * *

(4) If a higher MARSEC Level is set for the OCS facility with which the vessel is interfacing or is about to visit, the vessel complies, without undue delay, with all measures specified in the VSP for compliance with that higher MARSEC Level.

* * * * *

■ 17. In § 104.255—

■ a. Revise paragraphs (b)(2), (c), and (d) to read as set out below; and

■ b. In paragraph (g), after the words ''vessel-to-vessel'' add the word ''activity'':

§ 104.255 Declaration of Security (DoS).

* * * * *

(b) * * *

(2) For a vessel engaging in a vessel-to-vessel activity, prior to the activity, the respective Masters, VSOs, or their designated representatives must coordinate security needs and procedures, and agree upon the contents of the DoS for the period of the vessel-to-vessel activity. Upon the vessel-to-vessel activity and prior to any passenger embarkation or disembarkation or cargo transfer operation, the respective Masters, VSOs, or designated representatives must sign the written DoS.

(c) At MARSEC Levels 2 and 3, the Master, VSO, or designated representative of any manned vessel required to comply with this part must coordinate security needs and procedures, and agree upon the contents of the DoS for the period of the vessel-to-vessel activity. Upon the vessel-to-vessel activity and prior to any passenger embarkation or disembarkation or cargo transfer operation, the respective Masters, VSOs, or designated representatives must sign the written DoS.

(d) At MARSEC Levels 2 and 3, the Master, VSO, or designated representative of any manned vessel required to comply with this part must coordinate security needs and procedures, and agree upon the contents of the DoS for the period the vessel is at the facility. Upon the vessel's arrival to a facility and prior to any passenger embarkation or disembarkation or cargo transfer operation, the respective FSO and Master, VSO, or designated representatives must sign the written DoS.

* * * * *

§ 104.265 [Amended]

■ 18. In § 104.265—

■ a. In paragraph (b) introductory text, after the words ''ensure that'', add the words ''the following are specified'';

■ b. In paragraph (b)(1), remove the words ''to prevent unauthorized access'';

■ c. In paragraph (b)(3), remove the words ''are established'';

■ d. In paragraph (c)(5), remove the word ''seafarer's'' and add, in its place, the word ''seafarers' '':

■ e. In paragraph (e)(1), after the word ''Vessel Security Plan (VSP)'' add the words '', except for government-owned vehicles on official business when government personnel present identification credentials for entry'';

■ f. In paragraph (e)(9), remove the words ''required to engage in or be''; and

■ g. In paragraph (f)(1), after the word ''approved VSP'', add the words '', except for government-owned vehicles on official business when government personnel present identification credentials for entry''.

§ 104.275 [Amended]

■ 19. In § 104.275—

■ a. In paragraph (a) introductory text, after the word ''facility'', add the words ''or another vessel'';

■ b. In paragraph (a)(4), at the end of the paragraph, add the word ''and'';

■ c. In paragraph (a)(5), remove the word ''Coordinate'', and add, in its place, the words ''When there are regular or repeated cargo operations with the same shipper, coordinate'' and, at the end of the paragraph, remove the text ''; and'' and add, in its place, a period;

■ d. Remove paragraph (a)(6);

■ e. In paragraph (b)(1), remove the word ''Routinely'', add the words ''Unless unsafe to do so, routinely'' and, after the words ''cargo handling'', add the words ''for evidence of tampering'';

■ f. In paragraph (c)(1), after the words ''cargo spaces'' add the words ''for evidence of tampering'';

■ g. In paragraph (c)(5), remove the words ''of the use of scanning/detection equipment, mechanical devices, or canines'' and add, in their place, the words ''and intensity of visual and physical inspections''; and

■ h. In paragraph (d)(2), remove the words ''and facilities'' and add, in their place, the words '', facilities, and other vessels''.

§ 104.285 [Amended]

■ 20. In § 104.285—

■ a. In paragraph (a)(1), after the word ''patrols'', add a comma and remove the word ''and'';

■ b. In paragraph (b)(4), remove the word ''continually'' and add, in its place, the word ''continuously''; and

■ c. In paragraph (c)(5), remove the word ''or'' and add, in its place, the word ''and''.

■ 21. In § 104.292—

■ a. Redesignate paragraphs (d) and (e) as paragraphs (e) and (f), respectively;

■ b. In newly redesignated paragraph (e)(3), after the words ''requirements in § 104.265(e)(3)'', add the words ''and (f)(1)'';

■ c. In newly redesignated paragraph (f), after the words ''requirements in § 104.265(e)(3)'', add the words ''and § 104.265(g)(1)''; and

■ d. Add new paragraph (d) to read as follows:

§ 104.292 Additional requirements—passenger vessels and ferries.

* * * * *

(d) Owners and operators of passenger vessels and ferries covered by this part that use public access facilities, as that term is defined in § 101.105 of this subchapter, must address security measures for the interface of the vessel and the public access facility, in accordance with the appropriate Area Maritime Security Plan.

* * * * *

§ 104.297 [Amended]

■ 22. In § 104.297(c), remove the words ''prior to July 1, 2004'' and add, in their place, the words ''on or before July 1, 2004''.

§ 104.300 [Amended]

■ 23. In § 104.300(d)(8), after the words ''Vessel-to-vessel'', add the word ''activity''.

§ 104.305 [Amended]

■ 24. In § 104.305—

■ a. In the introductory text to paragraphs (d)(3), (d)(4), and (d)(5), after the word ''VSA'', add the word ''report'';

■ b. In § 104.305(d)(3)(iv) after the words ''dangerous goods'' remove the word ''or'' and replace with the word ''and''; and

■ c. Redesignate paragraph (d)(6) as paragraph (e) and, in the second sentence, after the words ''The VSA'', add the words '', the VSA report,''.

■ 25. Add § 104.310(c) to read as follows:

§ 104.310 Submission requirements.

* * * * *

(c) The VSA must be reviewed and revalidated, and the VSA report must be updated, each time the VSP is submitted for reapproval or revisions.

§ 104.400 [Amended]

■ 26. In § 104.400—

■ a. In paragraph (a)(2), after the words ''Must be written in English'' add the words '', although a translation of the VSP in the working language of vessel personnel may also be developed''.

■ b. Revise paragraph (b) to read as follows:

§ 104.400 General.

* * * * *

(b) The VSP must be submitted to the Commanding Officer, Marine Safety Center (MSC) 400 Seventh Street, SW., Room 6302, Nassif Building, Washington, DC 20590–0001, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC.* Owners or operators of foreign flag vessels that are subject to SOLAS Chapter XI must comply with this part by carrying on board a valid International Ship Security Certificate that certifies that the verifications required by Section 19.1 of part A of the ISPS Code (Incorporated by reference, *see* § 101.115 of this subchapter) have been completed. As stated in Section 9.4 of the ISPS Code, part A requires that, in order for the ISSC to be issued, the provisions of part B of the ISPS Code need to be taken into account.

* * * * *

■ 27. In § 104.410—

■ a. Revise the introductory text for paragraph (a) to read as set out below;

■ b. In paragraph (a)(1), after the words ''Vessel Security Plan (VSP)'', add the words '', in English,'';

■ c. Revise paragraphs (a)(2) and (b) to read as set out below;

■ d. In paragraph (c)(1), remove the words '', or'' and add, in their place, a semicolon;

■ e. Redesignate paragraph (c)(2) as paragraph (c)(3);

■ f. Add new paragraph (c)(2) to read as follows:

§ 104.410 Submission and approval.

(a) In accordance with § 104.115, on or before December 31, 2003, each vessel owner or operator must either:

* * * * *

(2) If intending to operate under an Approved Security Program, a letter signed by the vessel owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(b) Owners or operators of vessels not in service on or before December 31, 2003, must comply with the requirements in paragraph (a) of this section 60 days prior to beginning operations or by December 31, 2003, whichever is later.

(c) * * *

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

* * * * *

■ 28. In § 104.415—

■ a. In paragraph (a)(1), remove the text ''MSC'' and, add in its place, the words ''Marine Safety Center (MSC)'';

■ b. In paragraph (a)(2), remove the words ''Marine Safety Center'' and the words ''Marine Safety Center (MSC)'' and add, in their place, the text ''MSC''; and

■ c. Redesignate paragraph (a)(3) as (a)(4) and add new paragraph (a)(3) to read as follows:

§ 104.415 Amendment and audit.

(a) * * *

(3) Nothing in this section should be construed as limiting the vessel owner or operator from the timely implementation of such additional security measures not enumerated in the approved VSP as necessary to address exigent security situations. In such cases, the owner or operator must notify the MSC by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place.

* * * * *

46 CFR Chapter I

PART 2—VESSEL INSPECTIONS

■ 29. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. Note prec. 1).

■ 30. Add § 2.01–25(a)(2)(viii) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *

(2) * * *

(viii) International Ship Security Certificate (ISSC).

* * * * *

Dated: October 8, 2003.

Thomas H. Collins,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 03–26347 Filed 10–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[USCG–2003–14732]

RIN 1625–AA43

Facility Security

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, the temporary interim rule published on July 1, 2003, that provides security measures for certain facilities in U.S. ports. It also requires owners or operators of facilities to designate security officers for facilities, develop security plans based on security

assessments and surveys, implement security measures specific to the facility's operations, and comply with Maritime Security Levels. This rule is one in a series of final rules on maritime security in today's **Federal Register**. To best understand this rule, first read the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in today's **Federal Register**.

DATES: This final rule is effective November 21, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14732 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Lieutenant Gregory Purvis (G–MPS–1), U.S. Coast Guard by telephone 202–267–1072 or by electronic mail *gpurvis@comdt.uscg.mil*. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled ''Facility Security'' in the **Federal Register** (68 FR 39315). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41916).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some of which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' that contained comments in that temporary interim rule, plus comments on the ''Facility Security'' temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same letter to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rules. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider comments received after the period for receipt of comments closed on July 31, 2003.

A public meeting was held in Washington, DC, on July 23, 2003 and approximately 500 people attended. Comments from the public meeting are also included in the ''Discussion of Comments and Changes'' section of this preamble.

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. To view a copy of the complete regulatory text with the changes shown in this final rule, *see http://www.uscg.mil/hq/g-m/mp/index.htm*.

Background and Purpose

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the ''Background and Purpose'' section in the preamble to the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in this issue of the **Federal Register**.

Impact on Existing Domestic Requirements

33 CFR part 128, Security of Passenger Terminals, currently exists but applies only to cruise ship terminals. Until July 2004, 33 CFR part 128 will remain in effect. Facilities that were required to comply with part 128 must now also meet the requirements of this part, including § 105.290, titled ''Additional requirements—cruise ship terminals.'' The requirements in § 105.290 generally capture the existing requirements in part 128 that are specific for cruise ship terminals and capture additional detail to comply with the requirements of SOLAS Chapter XI–2 and the ISPS Code.

Discussion of Comments and Changes

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. For example, discussions of comments that requested clarification or changes to the Declaration of Security procedures are duplicated in the preambles to parts 104, 105, and 106. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG–2003–14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

Subpart A—General

This subpart contains provisions concerning applicability, waivers, and other subjects of a general nature applicable to part 105.

One commenter stated the public access area was a very well thought out concept. Another commenter stated that the thresholds and exempted facilities specified in § 105.105 should remain as written.

One commenter requested that § 105.105(a)(2) be revised, stating that the security requirements of facilities should be based on the terminal's size and capacity alone, rather than on the number of passengers a vessel is certificated to carry.

While a terminal's size or capacity is a way to determine applicability, we chose to focus on vessel interface and cargo handling activities because this method is consistent with the conceptual applicability standards employed internationally. When we focused on vessel-to-facility interfaces, our risk assessment showed that vessels certificated to carry over 150 passengers, and the facilities servicing them, may be involved in a transportation security incident.

Two commenters requested clarification on our reference to International Convention for Safety of Life at Sea, 1974, (SOLAS) and facility applicability. One commenter stated that because the applicability of the various chapters of SOLAS is not consistent, it is necessary to specify particular chapters in SOLAS to define the applicability of this regulation to U.S. flag vessels. The commenter

requested that we limit the reference to SOLAS in § 105.105(a)(3) to ''SOLAS Chapter XI–2.'' Another commenter stated that it is not clear whether the words ''greater than 100 gross registered tons'' applied to SOLAS vessels as well as to vessels that are subject to 33 CFR subchapter I.

We agree that the general reference to SOLAS is broad and could encompass more vessels than necessary. We have amended the applicability reference to read ''SOLAS Chapter XI'' because subchapter H addresses those requirements in SOLAS Chapter XI. Also, we have amended § 105.105(a) to apply the term ''greater than 100 gross registered tons'' to facilities that receive vessels subject only to subchapter I. We did not include references to foreign or U.S. ownership in the applicability paragraphs because it is duplicative of the existing language.

Two commenters were concerned about the breadth of the regulations. One commenter asked that the regulations be broadened to allow for exemptions. One commenter stated that the applicability as described in § 101.110 is ''much too general,'' stating that it can be interpreted as including a canoe tied up next to a floating dock in front of a private home. The commenter concluded that such a broad definition would generate ''a large amount of'' confusion and discontent among recreational boaters and waterfront homeowners.

Our applicability for the security regulations in 33 CFR subchapter H is for all vessels and facilities; however, parts 104, 105, and 106 directly regulate those vessels and facilities we have determined may be involved in transportation security incidents, which does not include canoes and private residences. For example, § 104.105(a) applies to commercial vessels; therefore, a recreational boater is not regulated under part 104. If a waterfront homeowner does not meet any of the specifications in § 105.105(a), the waterfront homeowner is not regulated under part 105. It should be noted that all waterfront areas and boaters are covered by parts 101 through 103 and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various MARSEC Levels that may apply to them. Security zones and other measures to control vessel movement are some examples of AMS Plan actions that may affect a homeowner or a recreational boater. Additionally, the COTP may impose measures, when necessary, to prevent injury or damage or to address specific security concerns.

Five commenters addressed the applicability of the regulations with respect to facilities and the boundaries of the Coast Guard jurisdiction relative to that of other Federal agencies. Four commenters advocated a ''firm line of demarcation'' limiting the Coast Guard authority to the ''dock,'' because as the rule is now written, a facility may still be left to wonder which Federal agency or department might have jurisdiction over it when it comes to facility security. One commenter suggested that the Coast Guard jurisdiction should not extend beyond ''the first continuous access control boundary shore side of the designated waterfront facility.''

Section 102 of the MTSA requires the Secretary of the Department in which the Coast Guard is operating to prescribe certain security requirements for facilities. The Secretary has delegated that authority to the Coast Guard. Therefore, the Coast Guard is not only authorized, but also required under the MTSA, to regulate beyond the ''dock.''

We received 64 comments concerned with the application of these security measures to ferries. The commenters did not want airport-like screening measures implemented on ferries, stating that such measures would cause travel delays, frustrating the mass transit aspect of ferry service. The commenters also stated that the security requirements will impose significant costs to the ferry owners, operators, and passengers.

These regulations do not mandate airport-like security measures for ferries; however, ferry owners or operators may have to heighten their existing security measures to ensure that our ports are secure. Ferry owners and operators can implement more stringent screening or access measures, but they can also include existing security measures in the required security plan. These measures will be fully reviewed and considered by the Coast Guard to ensure that they cover all aspects of security for periods of normal and reduced operations.

We understand that ferries often function as mass transit and we have included special provisions for them. Even with these provisions, our cost analysis indicated that compliance with these final rules imposes significant costs to ferry owners and operators. To address this concern, the Department of Homeland Security (DHS) has developed a grant program to provide funding for security upgrades. Ferry terminal owners and operators can apply for these grants.

Six commenters stated that the term ''fleeting facility'' in § 105.105(a)(4) is more general than the definition of a ''barge fleeting facility'' in § 101.105. The commenters pointed out that temporary staging areas of barges, or those areas for the breaking and making of tows provided by the U.S. Army Corps of Engineers, are not included in the definition of ''barge fleeting facility'' because they are not ''commercial fleeting areas.'' The commenters suggested that these areas be included in AMS Plans.

We agree with the commenters and are amending § 105.105(a)(4) to make it consistent with the definition stated in § 101.105 for ''barge fleeting facility.'' This new language can be found in § 105.105(a)(6). With regards to barge fleeting areas that are provided by the U.S. Army Corps of Engineers, in accordance with § 105.105(b), those facilities that are not subject to part 105 will be covered by parts 101 through 103 of this subchapter and will be included in the AMS Plan for the COTP zone in which the facility is located.

Three commenters disagreed with including all barge fleeting facilities that handle barges carrying hazardous material in the security requirements. The commenters stated that the security requirements are an undue burden on industry because the fleeting facilities are remote and routinely inaccessible by shore.

We developed the fleeting facility security requirements because these facilities may, if they fleet hazardous barges, be involved in a transportation security incident. Remoteness or inaccessibility of fleeting facilities will be factors to consider during the Facility Security Assessment and will be key in determining the security measures to be implemented.

One commenter noted that § 105.105(a)(4) does not apply to barges in a gas-free state, and suggested that we amend this paragraph to read, ''whether loaded, unloaded, or gas-free.''

Section 105.105(a)(4) applies to those barges that are actually loaded with cargoes regulated under 46 CFR subchapter D or O, not those that are gas-free. Barges that are gas-free are unlikely to be involved in a transportation security incident.

Three commenters recommended that we amend § 105.105(c)(3) to clarify the applicability of facilities that support the production, exploration, or development, of oil and natural gas.

We agree with the commenters that the exemptions in § 105.105(c)(3) are confusing and are amending this section for clarity.

Two commenters requested exemptions for ''facilities that handle certain fertilizers,'' stating that they do not pose risks to human health or the

environment from a transportation security perspective. The commenters requested that we exempt facilities that handle only certain non-hazardous fertilizers from the requirements of part 105, stating that these facilities are not likely to be involved in a transportation security incident.

Our risk assessment determined that facilities that receive vessels on international voyages, including those that carry non-hazardous fertilizers, may be involved in a transportation security incident. We are not, therefore, amending the applicability for facilities in part 105 to exempt these facilities. The facility owner or operator may apply to the Commandant (G-MP) for a waiver as specified in § 105.130. Because a Facility Security Plan is based on the results of the Facility Security Assessment, the security measures implemented will be tailored to the operations of the facility. Those security measures will be appropriate for that facility, but will differ from the measures implemented at a facility that handles dangerous goods or hazardous substances.

One commenter stated that we needed to clarify how the regulations apply to facilities in ''caretaker status.''

Facilities operating with ''caretaker status'' as defined in 33 CFR 154.105, that are not engaged in any of the activities regulated under part 105, will be covered under parts 101 through 103. Facilities in ''caretaker status'' engaging in or intending to engage in any of the activities regulated under § 105.105 must comply with part 105 by conducting a Facility Security Assessment and, 60 days prior to beginning operations, submitting a Facility Security Plan to the local COTP for approval. In such situations, the ''caretaker'' is the ''owner or operator'' as that term is defined in the regulations.

Six commenters stated that part 105 should not apply to marinas that receive a small number of passenger vessels certificated to carry more than 150 passengers or to ''mixed-use or special-use facilities which might accept or provide dock space to a single vessel'' because the impact on local business in the facility could be substantial. Two commenters stated that private and public riverbanks should not be required to comply with part 105 because ''there is no one to complete a Declaration of Security with, and no way to secure the area, before the vessel arrives.'' Two commenters stated that facilities that are ''100 percent public access'' should not be required to comply with part 105 because these types of facilities are ''vitally important to the local economy, as well as to the host municipalities.'' This commenter also stated that vessels certificated to carry more than 150 passengers frequently embark guests at private, residential docks and small private marinas for special events such as weddings and anniversaries and may visit such a dock only once.

We agree that the applicability of part 105 to facilities that have minimal infrastructure, but are capable of receiving passenger vessels, is unclear. Therefore, in the final rule for part 101, we added a definition for a ''public access facility'' to mean a facility approved by the cognizant COTP with public access that is primarily used for purposes such as recreation or entertainment and not for receiving vessels subject to part 104. By definition, a public access facility has minimal infrastructure for servicing vessels subject to part 104 but may receive ferries and passenger vessels other than cruise ships, ferries certificated to carry vehicles, or passenger vessels subject to SOLAS. Minimal infrastructure would include, for example, bollards, docks, and ticket booths, but would not include, for example, permanent structures that contain passenger waiting areas or concessions. We have not allowed public access facilities to be designated if they receive vessels such as cargo vessels because such cargo-handling operations require additional security measures that public access facilities would not have. We amended part 105 to exclude these public access facilities, subject to COTP approval, from the requirements of part 105. We believe this construct does not reduce security because the facility owner or operator or entity with operational control over these types of public access facilities still has obligations for security that will be detailed in the AMS Plan, based on the AMS Assessment. Additionally, Vessel Security Plans must address security measures for using the public access facility. This exemption does not affect existing COTP authority to require the implementation of additional security measures to deal with specific security concerns. We have also amended § 103.505, to add public access facilities to the list of elements that must be addressed within the AMS Plan.

We received 26 comments dealing with the definition of ''facility.'' One commenter asked whether a facility that is inside a port that handles cargo or containers, but does not have direct water access, is covered under the definition of facility. Another commenter recommended that the definition specify that facilities without water access and that do not receive vessels be exempt from the requirements. One commenter asked whether small facilities located inland on a river would be subject to part 105 if they receive vessels greater than 100 gross registered tons on international voyages. One commenter asked whether a company that receives refined products via pipeline from a dock facility that the company does not own qualifies as a regulated facility. One commenter asked whether part 105 applies to facilities at which vessels do not originate or terminate voyages. Two commenters stated that the word ''adjacent'' in the definition should be changed to read ''immediately adjacent'' to the ''navigable waters.'' One commenter suggested that, in the definition, the word ''adjacent'' be defined in terms of a physical distance from the shore and the terms ''on, in, or under'' and ''waters subject to the jurisdiction of the U.S.'' be clarified. Two commenters understand the definition of ''facility'' to possibly include overhead power cables, underwater pipe crossings, conveyors, communications conduits crossing under or over the water, or a riverbank. One commenter asked for a blanket exemption for electric and gas utilities. One commenter suggested rewriting the applicability of ''facilities'' in plain language or, alternatively, providing an accompanying guidance document to help owner and operators determine whether their facilities are subject to these regulations. One commenter asked us to clarify which facilities might ''qualify'' for future regulation and asked us to undertake a comprehensive review of security program gaps and overlaps, in coordination with DHS. One commenter stated that a facility that receives only vessels in ''lay up'' or for repairs should not be required to comply with part 105.

We recognize that the definition of ''facility'' in § 101.105 is broad, and we purposefully used this definition to be consistent with existing U.S. statutes regarding maritime security. A facility within an area that is a marine transportation-related terminal or that receives vessels over 100 gross tons on international voyages is regulated under § 105.105. All other facilities in an area not directly regulated under § 105.105, such as some adjacent facilities and utility companies, are covered under parts 101 through 103. If the COTP determines that a facility with no direct water access may pose a risk to the area, the facility owner or operator may be required to implement security

measures under existing COTP authority. With regard to facilities that receive only vessels in ''lay up'' or for repairs, we amended the regulations to define, using the definition of a general shipyard facility from 46 CFR 298.2, and exempt general shipyard facilities from the requirements of part 105 unless the facility is subject to 33 CFR parts 126, 127, or 154 or provides any other service beyond those services defined in § 101.105 to any vessel subject to part 104. In a similar manner, in part 105, we are also exempting facilities that receive vessels certificated to carry more than 150 passengers if those vessels do not carry passengers while at the facility nor embark or disembark passengers from the facility. We exempted facilities that receive vessels for lay-up, dismantling, or placing out of commission to be consistent with the other changes we have discussed above. The facilities listed in the amended § 105.105 as exceptions and § 105.110 as exemptions will be covered by the AMS Plan, and we intend to issue further guidance on addressing these facilities in the AMS Plan. Finally, while not in ''plain language'' format, we have attempted to make these regulations as clear as possible. We have created Small Business Compliance Guides, which should help facility owners and operators determine if their facilities are subject to these regulations. These Guides are available where listed in the ''Assistance for Small Entities'' section of this final rule.

Twelve commenters questioned our compliance dates. One commenter stated that because the June 2004 compliance date might not be easily achieved, the Coast Guard should consider a ''phased in approach'' to implementation. Four commenters asked us to verify our compliance date expectations and asked if a facility can ''gain relief'' from these deadlines for good reasons.

The MTSA requires full compliance with these regulations 1 year after the publication of the temporary interim rules, which were published on July 1, 2003. Therefore, a ''phased in approach'' will not be used. While compliance dates are mandatory, a vessel or facility owner or operator could ''gain relief'' from making physical improvements, such as installing equipment or fencing, by addressing the intended improvements in the Vessel or Facility Security Plan and explaining the equivalent security measures that will be put into place until improvements have been made.

After further review of the rules, we are amending the dates of compliance in § 105.115(a) and (b), § 105.120 introductory text, and § 105.410(a) to align with the MTSA and the International Ship and Port Facility Security Code (ISPS Code) compliance dates. For example, we are changing the deadline in § 105.115(a) for submitting a Facility Security Plan from December 29, 2003, to December 31, 2003.

One commenter requested that we clarify § 105.125, Noncompliance, to ''focus on only those areas of noncompliance that are the core building blocks of the facility security program'' stating that the section requires a ''self-report [of] every minor glitch in implementation.''

We did not intend for § 105.125 to require self-reporting for minor deviations from these regulations if they are corrected immediately. We have clarified §§ 104.125, 105.125, and 106.120 to make it clear that owners or operators are required to request permission from the Coast Guard to continue operations when temporarily unable to comply with the regulations.

Three commenters recommended developing an International Maritime Organization (IMO) list of port facilities to help foreign shipowners identify U.S. facilities not in compliance with subchapter H. In a related comment, there was a request for the Coast Guard to maintain and publish a list of non-compliant facilities and ports because a COTP may impose one or more control and compliance measures on a domestic or foreign vessel that has called on a facility or port that is not in compliance.

We do not intend to publish a list of each individual facility that complies or does not comply with part 105. As discussed in the temporary interim rule (68 FR 39262) (part 101), our regulations align with the requirements of the ISPS Code, part A, section 16.5, by using the AMS Plan to satisfy our international obligations to communicate to IMO, as required by SOLAS Chapter XI–2, regulation 13.3, the locations within the U.S. that are covered by an approved port facility security plan. Any U.S. facility that receives vessels subject to SOLAS is required to comply with part 105.

We received seven comments regarding waivers, equivalencies, and alternatives. Three commenters appreciated the flexibility of the Coast Guard in extending the opportunity to apply for a waiver or propose an equivalent security measure to satisfy a specific requirement. Four commenters requested detailed information regarding the factors the Coast Guard will focus on when evaluating applications for waivers, equivalencies, and alternatives.

The Coast Guard believes that equivalencies and waivers provide flexibility for vessel owners and operators with unique operations. Sections 104.130, 105.130, and 106.125 state that vessel or facility owners or operators requesting waivers for any requirement of part 104, 105, or 106 must include justification for why the specific requirement is unnecessary for that particular owner's or operator's vessel or facility or its operating conditions. Section 101.120 addresses Alternative Security Programs and § 101.130 provides for equivalents to security measures. We intend to issue guidance that will provide more detailed information about the application procedures and requirements for waivers, equivalencies, and the Alternative Security Program.

After further review of parts 101 and 104–106, we have amended §§ 101.120(b)(3), 104.120(a)(3), 105.120(c), and 106.115(c) to clarify that a vessel or facility that is participating in the Alternative Security Program must complete a vessel or facility specific security assessment report in accordance with the Alternative Security Program, and it must be readily available.

One commenter stated that facilities should be permitted to use equivalent security measures because facilities vary greatly in their design and security risk profile.

We agree and have provided facilities the opportunity to apply for approval of equivalent security measures in § 105.135.

Subpart B—Facility Security Requirements

This subpart describes the responsibilities of the facility owner or operator and personnel relative to facility security. It includes requirements for training, drills, recordkeeping, and Declarations of Security. It identifies specific security measures, such as those for access control, cargo handling, monitoring, and particular types of facilities.

Two commenters suggested that the Coast Guard should not regulate security measures but should establish security guidelines based on facility type, in essence creating a matrix with ''risk-levels'' and identified suggested measures for facility security.

We cannot establish only guidelines because the MTSA and SOLAS require us to issue regulations. We have provided performance-based, rather than prescriptive, requirements in these regulations to give owners or operators flexibility in developing security plans

tailored to vessels' or facilities' unique operations.

One commenter asked who would be ensuring the integrity of security training and exercise programs.

Since the events of September 11, 2001, the Coast Guard has developed a directorate responsible for port, vessel, and facility security. This directorate oversees implementation and enforcement of the regulations found in parts 101 through 106. Additionally, owners and operators of vessels and facilities will be responsible for recordkeeping regarding training, drills, and exercises, and the Coast Guard will review these records during periodic inspections.

One commenter stated that it is appropriate for Federal, State, and local authorities to assume responsibility for terminal security, and that there must be a responsible party for the terminal at all times whether a vessel is there or not.

Section 105.200(a) states that the owner or operator of the facility must ensure that the facility operates in compliance with the requirements of this part. Therefore, the owner or operator is responsible for terminal security at all times whether or not a vessel is at the facility.

Five commenters stated that the requirement of § 105.200(b)(2), which compels Facility Security Officers to implement security measures in response to MARSEC Levels within 12 hours of notification would be problematic, especially for facilities with limited manpower, and during weekends, or nights.

We disagree with the commenters and believe that it is well within reason to expect that Facility Security Officers can implement the necessary security measures changes within 12 hours.

Two commenters recommended that the word ''adequate'' be deleted from § 105.200(b)(6) because the commenter believes that the owners' or operators' definition of ''adequate'' might not be the same as intended in the regulations.

The use of the word ''adequate'' throughout the regulations emphasizes that minimal coordination of security issues may not be sufficient and allows for differences in individual circumstances.

One commenter recommended that facility owners or operators should limit access to vessels moored at the facility to those individuals and organizations that conduct business with the vessel, contending that the word ''visitor'' may have too broad a connotation.

The regulations provide flexibility to define who can have access to a facility. The Facility Security Plan must contain security measures for access control and can limit access to those individuals and organizations that conduct business with the vessel. We do specify that a facility must ensure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for representatives of seafarers' welfare and labor organizations.

One commenter suggested adding a provision that would allow unimpeded access for passengers to board charterboats at facilities regulated under part 105, stating that the ''extraordinary measures'' required to ensure facility security could hamper public entrance to these facilities.

A facility owner or operator must coordinate access to the facility with vessel personnel under § 105.200(b)(7); however, that owner or operator is also required to implement security measures that include access control. We did not allow any group of vessel passengers or personnel unimpeded access to a facility regulated under this subchapter because it would undermine the purpose of access control. A facility owner or operator may impede passengers' access to charterboats if he or she perceives that these passengers pose a risk, are at risk, or if such passage is not in compliance with the facility's security plan.

Nineteen commenters were concerned about the rights of seafarers at facilities. One commenter stated that the direct and specific references to shore leave in the regulations conform exactly with his position and the widespread belief that shore leave is a fundamental right of a seaman. One commenter stated that coordinating mariner shore leave with facility operators is important and should be retained, stating that shore leave for ships' crews exists as a fundamental seafarers' right that can be denied only in compelling circumstances. The commenter also stated that chaplains should continue to have access to vessels, especially during periods of heightened security. Four commenters requested that the regulations require facilities to allow vessel personnel access to the facilities for shore leave, or other purposes, stating that shore leave is a basic human right and should not be left to the discretion of the terminal owner or operator. One commenter stated that seafarers are being denied shore leave as they cannot apply for visas in a timely manner and that seafarers who meet all legal requirements should be permitted to move to and from the vessel through the facility, subject to reasonable requirements in the Facility Security Plan. One commenter stated that it is the responsibility of the government to determine appropriate measures for seafarers to disembark. One commenter encouraged the government to expedite the issuance of visas for shore leave.

We agree that coordinating mariner shore leave and chaplains' access to vessels with facility operators is important and should be retained. Sections 104.200(b)(6) and 105.200(b)(7) require owners or operators of vessels and facilities to coordinate shore leave for vessel personnel in advance of a vessel's arrival. We have not mandated, however, that facilities allow access for shore leave because during periods of heightened security shore leave may not be in the best interest of the vessel personnel, the facility, or the public. Mandating such access could infringe on private property rights; however, we strongly encourage facility owners and operators to maximize opportunities for mariner shore leave and access to the vessel through the facility by seafarer welfare organizations. The Coast Guard does not issue, nor can it expedite the issuing of, visas. Additionally, visas are a matter of immigration law and are beyond the scope of these rules. Finally, it should also be noted that the government has treaties of friendship, commerce, and with several nations. These treaties provide that seafarers shall be allowed ashore by public authorities when they and the vessel on which they arrive in port meet the applicable requirements or conditions for entry. We have amended §§ 104.200(b) and 105.200(b) to include language that treaties of friendship, commerce, and navigation should be taken into account when coordinating access between facility and vessel owners and operators.

Three commenters stated that many of the requirements of § 104.265, security measures for access control, should not apply to unmanned vessels because there is no person on board the vessel at most times.

We disagree. The owner or operator must ensure the implementation of security measures to control access because unmanned barges directly regulated under this subchapter may be involved in a transportation security incident. As provided in § 104.215(a)(4), the Vessel Security Officer of an unmanned barge must coordinate with the Vessel Security Officer of any towing vessel and Facility Security Officer of any facility to ensure the implementation of security measures for the unmanned barge. We have amended § 105.200 to clarify the facility owner's or operator's responsibility for the implementation of security measures for

unattended or unmanned vessels while moored at a facility.

Four commenters stated that any future interim rules should not apply to certain waterfront areas, such as seafarers' welfare centers and clubs, and that these areas should not be considered facilities subject to the regulations under part 105.

Seafarers' welfare centers and clubs are not specifically regulated under part 105 unless these facilities are contained within a marine transportation-related facility. Any future rulemakings regarding these types of centers or clubs would be subject to notice and comment.

One commenter requested that we amend § 105.200(b)(9) to clarify that owners or operators must report ''transportation'' security incidents because the word ''transportation'' is missing.

We agree with the commenter and have amended the section accordingly. This language is now found in § 105.200(b)(10).

Five commenters supported the Coast Guard in not specifically defining training methods. Another commenter agrees with the Coast Guard's position that the owner or operator may certify that the personnel with security responsibilities are capable of performing the required functions based upon the competencies listed in the regulations. Two commenters stated that formal security training for Facility Security Officers and personnel with security related duties become mandatory as soon as possible. One commenter stated that they were concerned with the lack of formal training for Facility Security Officers.

As we explained in the temporary interim rule (68 FR 39263) (part 101), there are no approved courses for facility personnel and, therefore, we intend to allow Facility Security Officers to certify that personnel holding a security position have received the training required to fulfill their security duties. Section 109 of the MTSA required the Secretary of Transportation to develop standards and curricula for the education, training, and certification of maritime security personnel, including Facility Security Officers. The Secretary delegated that authority to the Maritime Administration (MARAD). MARAD has developed model training standards and curricula for maritime security personnel, including Facility Security Officers. In addition, MARAD intends to develop course approval and certification requirements in the near future.

Three commenters stated that it would be difficult for smaller companies to meet the qualification requirements for Facility Security Officers that are set out in § 105.205.

We recognize that some companies will find it harder than others to locate individuals who are qualified to serve as Facility Security Officers. We believe there is flexibility in the structure of our requirements, and therefore these requirements are able to take this into account. We allow Facility Security Officers to have general knowledge, which they may acquire through training or through equivalent job experience. Formal training is not a prerequisite in the designation of a Facility Security Officer. We also allow an individual to serve as a Facility Security Officer on a collateral-duty basis, to serve as the Facility Security Officer for multiple facilities, and to delegate duties, all of which make it easier for companies to identify and designate qualified Facility Security Officers.

Fifteen commenters asked that the Coast Guard re-examine the requirement that if a Facility Security Officer serves more than one facility, those facilities must be no further than 50 miles apart. The commenters argued that companies with multiple facilities should be able to assign Facility Security Officer delegations, regardless of distance between facilities, especially since this section allows the Facility Security Officer to delegate security duties to other personnel, so long as he or she retains final responsibility for these duties. Four of these commenters did not support the limitation on Facility Security Officers from serving facilities in different COTP zones, even if the facilities are within 50 miles of each other. One commenter stated that many facilities that are not co-located may be managed as multiple site complexes using shared operational and administrative resources, and that, as such, they should have one Facility Security Officer assigned to them regardless of the distance between them.

We believe these commenters misinterpreted § 105.205(a)(2). There is no requirement that the Facility Security Officer must be situated within any particular distance of the facilities for which he or she serves. Section 105.205(a)(2) pertains to the maximum distance between the individual facilities that can be served by a single Facility Security Officer. We determined that a distance of 50 miles between facilities within a single COTP zone was appropriate for several reasons. During our initial public meetings we received comments from many small facility operators who have numerous similarly designed, equipped and operated facilities in proximity to each other. They believed that a single Facility Security Officer could adequately meet the responsibilities set out in § 105.205(c) in situations like this. The 50-mile distance requirement was determined because facilities sharing a similar design, equipment, and operations would often share other similar characteristics such as geography, infrastructure, proximity to population centers, and common emergency response and crisis management authorities. In addition to the 50-mile limit, we require all single Facility-Security-Officer-served-facilities to be within a single COTP zone because the COTP is the Facility Security Plan approving authority, and the COTP, as Federal Maritime Security Coordinator, is the Federal official charged with communicating the MARSEC Levels to the Facility Security Officer. We have not specified where the designated Facility Security Officer must be in proximity to the facilities he or she serves. However, it is our opinion that in order to effectively carry out the duties and responsibilities specified in § 105.205(c), the Facility Security Officer should be able to easily make on-site facility visits of sufficient frequency and scope so as to be able to effectively monitor compliance with the requirements established in 33 CFR part 105.

Nine commenters requested formal alternatives to Facility Security Officers, Company Security Officers, and Vessel Security Officers much like the requirements of the Oil Pollution Act of 1990, which allow for alternate qualified individuals.

Parts 104, 105, and 106 provide flexibility for a Company, Vessel, or Facility Security Officer to assign security duties to other vessel or facility personnel under §§ 104.210(a)(4), 104.215(a)(5), 105.205(a)(3), and 106.210(a)(3). An owner or operator is also allowed to designate more than one Company, Vessel, or Facility Security Officer. Because Company, Vessel, or Facility Security Officer responsibilities are key to security implementation, vessel and facility owners and operators are encouraged to assign an alternate Company, Vessel, or Facility Security Officer to coordinate vessel or facility security in the absence of the primary Company, Vessel, or Facility Security Officer.

One commenter stated that allowing the Vessel Security Officer and Facility Security Officer to perform collateral non-security duties is not an adequate response to risk.

Security responsibilities for the Company, Vessel, and Facility Security Officers in parts 104, 105, and 106 may be assigned to a dedicated individual if the owners or operators believe that the responsibilities and duties are best served by a person with no other duties.

Two commenters stated that the Facility Security Officer should be allowed to assign the day-to-day security activities to other personnel.

The regulations, allow for the Facility Security Officers to assign security duties to other facility personnel under § 105.205(a)(3).

After further review of § 105.205, we are amending § 105.205(c)(11) to clarify that the responsibilities of the Facility Security Officer includes the execution of any required Declarations of Security with the Masters, Vessel Security Officers, or their designated representatives.

Two commenters suggested that ferries be exempt from the ''while at sea'' clause in § 104.220(i) that requires company or vessel personnel responsible for security duties to have knowledge on how to test and calibrate security equipment and systems and maintain them, arguing that ferries are not oceangoing and, therefore, typically use a manufacturer's service representative to perform equipment testing and calibration while at the dock. In addition, one commenter requested clarification on whether a manufacturer's technical expert could be used to perform regularly planned maintenance at the ferry terminal.

We disagree with exempting ferry or facility security personnel from understanding how to test, calibrate, or maintain security equipment and systems. However, §§ 104.220 and 105.210 provide the company the flexibility to determine who should have an understanding of how to test, calibrate, and maintain security equipment and systems. By stating ''company and vessel personnel responsible for security duties must * * * as appropriate,'' we have allowed a company to write a Vessel or Facility Security Plan that outlines responsibilities for security equipment and systems. If the company chooses to have company security personnel hold that responsibility, then vessel or facility security personnel would simply have to know how to contact the correct company security personnel and know how to implement interim measures as a result of equipment failures either at sea or in port. Sections 104.220 and 105.210 do not preclude a manufacturer's service representative from performing equipment maintenance, testing, and calibration.

One commenter stated that crowd management and control techniques, under § 105.210(e), should not be required of facility personnel with security duties, stating that this function is solely a responsibility of public responders.

We believe that crowd management and control techniques may be appropriate for facility security personnel with certain security duties. The overall security and safe operation of a facility rests with the owner or operator of that facility. It is not outside the realm of facility personnel's duties to consider security and their role in minimizing risk, including crowd management and control techniques.

Two commenters requested that ferries and their terminals be exempt from conducting physical screening and, therefore, should also be exempt from §§ 104.220(l) and 105.210(l), which require security personnel to know how to screen persons, personal effects, baggage, cargo, and vessel stores.

We disagree with exempting ferries and their terminals from the screening requirement and, therefore, will continue to require that certain security personnel understand the various methods that could be used to conduct physical screening. Because ferries certificated to carry more than 150 passengers and the terminals that serve them may be involved in a transportation security incident, it is imperative that security measures such as access control be implemented. Section 104.292 provides passenger vessels and ferries alternatives to identification checks and passenger screening. However, it does not provide alternatives to the requirements for cargo or vehicle screening. Thus, ferry security personnel assigned to screening duties should know the methods for physical screening. There is no corresponding alternative to § 104.292 for terminals serving ferries carrying more than 150 passengers; therefore, terminal security personnel assigned to screening duties should also know the methods for physical screening.

One commenter suggested exempting ferry terminals from § 105.210(l) concerning methods of physical screening of persons, personal effects, baggage, cargo, and vessel stores because ''it is not applicable.''

We disagree that all ferry terminals should be exempted, as this comment appears to presuppose that portions of the regulations are not applicable to all ferry terminals. We determined that facilities that receive vessels certificated to carry more than 150 passengers are at risk of being involved in a transportation security incident and are regulated under § 105.105.

Forty-one commenters requested that §§ 104.225, 105.215, and 106.220 be either reworded or eliminated because the requirement to provide detailed security training to all contractors who work in a vessel or facility or to facility employees, even those with no security responsibilities such as a secretary or clerk, is impractical, if not impossible. The commenters stated that, unless a contractor has specific security duties, a contractor should only need to know how, when, and to whom to report anything unusual as well as how to react during an emergency. One commenter suggested adding a new section that listed specific training requirements for contractors and vendors.

The requirements in §§ 104.225, 105.215, and 106.220 are meant to be basic security and emergency procedure training requirements for all personnel working in a vessel or facility. In most cases, the requirement is similar to the basic safety training given to visitors to ensure they do not enter areas that could be harmful. To reduce the burden of these general training requirements, we allowed vessel and facility owners and operators to recognize equivalent job experience in meeting this requirement. However, we believe contractors need basic security training as much as any other personnel working on the vessel or facility. Depending on the vessel or facility, providing basic security training (*e.g.*, how and when to report information, to whom to report unusual behaviors, how to react during a facility emergency) could be sufficient. To emphasize this, we have amended §§ 104.225, 105.215, and 106.220 to clarify that the owners or operators of vessels and facilities must determine what basic security training requirements are appropriate for their operations.

One commenter agreed with our inclusion of tabletop exercises as a cost-effective means of exercising the security plan.

Eleven commenters requested clarification on drills and exercises. One commenter suggested that an exercise be defined as a tabletop exercise, while a drill be a one-topic, specific exercise that is one-hour in length and is easily incorporated into daily operating activities. The commenter also suggested that the frequency of exercise requirements be extended to once every three years. Additionally, two commenters requested that security drills and exercises be integrated with non-security drills and exercises. Two commenters requested that certain

facilities be allowed to deviate from the requirements in § 105.220. Two commenters stated that exercises should be a company-wide test of a company's security readiness. One commenter requested a waiver from the three drills per year requirement, based upon facility size.

We disagree that exercises should be exclusively tabletop exercises. Under § 105.220(c), exercises may be full scale or live, tabletop simulation, or seminar or combined with other appropriate exercises as stated in § 105.220(c)(2)(i–iii). Section 105.220(b) provides enough flexibility for drills to allow them to be incorporated into daily operations. We do not disagree that a drill may be accomplished in a one-hour period but believe that the length of time would actually depend on which portion of the security plan the drill is testing. Therefore, we did not constrict or prescribe a drill time-length in the regulation. We believe that annual exercises are necessary for each facility to maintain an adequate level of security readiness. These security exercises, however, may be part of a cooperative exercise program with applicable facility and vessel security plans or comprehensive port exercises as stated in § 105.220(c)(3). We agree that the exercises should be a company-wide test of a company's security readiness in its areas of operation. Additionally, any facility owner or operator may request a waiver from any of the security requirements, in light of the operating conditions of the facility, in accordance with § 105.130.

Four commenters suggested that security drills are not needed when the only option is to call ''911.''

Although calling ''911'' may test one element of the Facility Security Plan, additional drills are required to cover the other elements of the Facility Security Plan to ensure its effective implementation.

Nine commenters stated that companies should be able to take credit toward fulfilling the drill and exercise requirements for actual incidents or threats, as under § 103.515.

We agree that, during an increased MARSEC Level, vessel and facility owners and operators may be able to take credit for implementing the higher security measures in their security plans. However, there are cases where a vessel or facility implementing a Vessel or Facility Security Plan may not attain the higher MARSEC Level or otherwise not be required to implement sufficient provisions of the plan to qualify as an exercise. Therefore, we have amended parts 104, 105, and 106 to allow an actual increase in MARSEC Level to be credited as a drill or an exercise if the increase in MARSEC Level meets certain parameters. In the case of OCS facilities, this type of credit must be approved by the Coast Guard in a manner similar to the provision found in § 103.515 for the AMS Plan requirements.

One commenter stated that the language in § 105.225, regarding recordkeeping, does not specify where the records should be kept. The commenter stated that it is presumed that such records may be kept off-site in a secure location accessible to the Facility Security Officer and other appropriate personnel. One commenter asked for clarification of sensitive security information because there is no suitable place for such information to be protected on board an unmanned vessel. One commenter recommended that records be kept onshore and not on board the vessel.

Sections 104.235(a) and 105.225(a) state that the records must be made available to the Coast Guard upon request, and §§ 104.235(c) and 105.225(c) state that the records must be protected from unauthorized access. Therefore, a facility or vessel owner or operator must ensure that records are kept safely and also are available for inspection by the Coast Guard upon request, but the records do not necessarily have to be kept at the facility or on the vessel.

One commenter asked for a definition of ''security equipment'' and suggested using the term ''security system'' instead. The commenter also asked how much detail must be included in records of maintenance, calibration, and testing.

Depending on how a facility owner or operator decides to implement the security measures of this part, either term would be appropriate. Some may choose to install stand-alone equipment, while others may choose to have an integrated security system. We did not prescribe specific details for recordkeeping of security equipment because of the diverse possibilities of implementation. The intent of the recordkeeping requirements in § 105.225 was to keep a general log of calibration, testing, and maintenance performed.

Two commenters recommended that a sentence be added to the end of § 105.225(b)(1) that reads: ''Short domain awareness and other orientation type training that may be given to contractor and other personnel temporarily at the facility and not involved in security functions need not be recorded.'' The commenters stated that this change would eliminate the unnecessary recordkeeping for this general ''domain awareness'' training.

We agree that the recordkeeping requirements in § 105.225 for training are broad and may capture training that, while necessary, does not need to be formally recorded. Therefore, we have amended the requirements in § 105.225(b)(1) to only record training held to meet § 105.210. We have also made corresponding changes to §§ 104.235(b)(1) and 106.230(b)(1).

Six commenters stated that the majority of the recordkeeping requirements for facilities and OCS facilities were overly burdensome and unnecessary. One commenter suggested adding exemptions to § 105.110(b) to exempt public access areas from the recordkeeping requirements under §§ 105.225(b)(3), (b)(4), (e)(8) and (e)(9).

We disagree with the commenters. Recordkeeping serves the vital function of documenting compliance with the regulations. We also disagree that exemptions from the recordkeeping requirements are appropriate for public access areas. We note that there is no § 105.225(e).

We received 28 comments regarding communication of changes in the MARSEC Levels. Most commenters were concerned about the Coast Guard's capability to communicate timely changes in MARSEC Levels to facilities and vessels. Some stressed the importance of MARSEC security information reaching each port area in the COTP's zone and the entire maritime industry. Some stated that local Broadcast Notice to Mariners and MARSEC Directives are flawed methods of communication and stated that the only acceptable ways to communicate changes in MARSEC Levels, from a timing standpoint, are via email, phone, or fax as established by each COTP.

MARSEC Level changes are generally issued at the Commandant level and each Marine Safety Office (MSO) will be able to disseminate them to vessel and facility owners or operators, or their designees, by various ways. Communication of MARSEC Levels will be done in the most expeditious means available, given the characteristics of the port and its operations. These means will be outlined in the AMS Plan and exercised to ensure vessel and facility owners and operators, or their designees, are able to quickly communicate with us and vice-versa. Because MARSEC Directives will not be as expeditiously communicated as other COTP Orders and are not meant to communicate changes in MARSEC Levels, we have amended § 101.300 to remove the reference to MARSEC Directives.

Six comments were received concerning the requirement that facilities communicate changes in MARSEC Levels to vessels. Four commenters requested that OCS facilities only notify those vessels subject to part 104 of a change in MARSEC Level, instead of notifying all vessels conducting operations with the OCS facility, vessels moored to a facility, or scheduled to arrive within 96 hours.

We disagree with the commenter. Although vessels not covered under part 104 may not be likely to be involved in a transportation security incident, they may interface with facilities that are likely to be involved in a transportation security incident. Therefore, the Coast Guard requires facilities to transmit the necessary information on MARSEC Levels to all vessels they interface with regardless of whether the vessels have their own Vessel Security Plan to ensure that security at the facilities is not compromised.

We received 15 comments on the facility owner's or operator's responsibility to communicate changes in MARSEC Levels to vessels bound for the facility. Nine commenters noted that it would be difficult and impractical for facilities to notify vessels 96 hours prior to arrival of changes in MARSEC Levels because some vessels and facilities do not have a means to provide secure communications. Three commenters stated that facilities should not be responsible for notifying vessels that have not arrived at the facility of MARSEC Level changes. In contrast, one commenter suggested that the Coast Guard amend § 101.300(a) to include a provision for facilities to notify vessels of MARSEC Level changes within 96 hours, much like that which is currently found in § 105.230(b)(1).

The intent of the regulations was to give vessel owners or operators the maximum amount of time possible to ensure the higher MARSEC Level is implemented on the vessel prior to interfacing with a facility. This ensures that the facility's security at the higher MARSEC Level is not compromised when the vessel arrives. Therefore, while it may be difficult to contact a vessel in advance of its arrival, it is imperative for the security of the facility and the vessel. Additionally, communications between the facility and the vessel do not need to be secure, as MARSEC Levels are not classified information. We have not amended § 101.300(a), as the commenter suggested, because this section is intended to regulate communication at the port level, whereas § 105.230(b)(1) is intended to regulate communication at the individual facilities within the port.

Seven commenters stated that although facility or vessel personnel need to understand the current MARSEC Level and have a heightened state of awareness, in most cases, the specifics of the threat should not be disclosed.

It is necessary for the vessel or facility personnel to know about threats to the vessel or facility because this helps to focus their attention on specific attempts or types of threats to the vessel or facility. To balance this need with sensitive security concerns, §§ 104.240(c) and 105.230(c) give the owners or operators discretion in deciding how much specific information needs to be disclosed to facility or vessel personnel.

Thirty-three commenters stated that the public lacks either the authority or the expertise for implementing the security measures for MARSEC Level 3, which include armed patrols, waterborne security, and underwater screening.

We disagree and believe that owners and operators have the authority to implement the identified security measures. For example, it is well settled under the law of every State that an employer may maintain private security guards or private security police to protect his or her property. The regulations do not require owners or operators to undertake law enforcement action, but rather to implement security measures consistent with their longstanding responsibility to ensure the security of their vessels and facilities, as specifically prescribed by 33 CFR 6.16–3 and 33 CFR 6.19–1, by: deterring transportation security incidents; detecting an actual or a threatened transportation security incident for reporting to appropriate authorities; and, as authorized by the relevant jurisdiction, defending themselves and others against attack. It is also important to note that the security measures identified by these commenters, while listed in §§ 104.240(e) and 105.230(e), are not exclusive and only relate to MARSEC Level 3 implementation. In many instances, the owner or operator may decide to implement these security measures through qualified contractors or third parties who can provide any expertise that is lacking within the owner's or operator's own organization and who also have the required authority.

One commenter asked for clarification of § 104.240(b)(2) because ''facility and barge fleets have control of unmanned vessels'' moored at their facilities.

We agree that the owners and operators of barge fleeting facilities have control of unmanned vessels that are moored at their facilities. As such, it is the responsibility of the facility owner or operator to ensure that the COTP is notified when compliance with a higher MARSEC Level has been implemented at the facility, including on the unmanned vessels moored at the facility.

Two commenters stated that § 105.235(b) requires an effective means of communications be in place and documented in the facility plan. One of the commenters asked if it was acceptable to communicate with the vessel through the person in charge.

Section 105.235(b) provides enough flexibility that it may be appropriate to list the person in charge, as defined in 33 CFR part 155, as a means of communication in the Facility Security Plan, provided it meets with the approval of the cognizant COTP.

Two commenters suggested that the Coast Guard should be responsible for facilitating communications between vessels and facilities.

We believe that it is the Coast Guard's role to ensure that vessels and facilities have the proper procedures and equipment for communicating with each other. The Coast Guard does have communication responsibilities, as found in § 101.300. It is imperative, however, that vessels and facilities effectively communicate with each other in order to coordinate the implementation of security measures. Thus, we have placed this requirement on the owner or operator, not the Coast Guard. The Coast Guard will be inspecting facilities and vessels to ensure this communication is accomplished.

We received 14 comments about the length of the effective period of a continuing Declaration of Security for each MARSEC Level. Five commenters stated that there is little need to renew a Declaration of Security every 90 days and that it should instead be part of an annual review of the Vessel Security Plan. Three commenters stated that the effective period of MARSEC Level 1 should not exceed 180 days while the effective period for MARSEC Level 2 should not exceed 90 days. One commenter noted that a vessel may execute a continuing Declaration of Security and assumed that this means that a Declaration of Security for a regular operating public transit system is good for the duration of the service route. Three commenters recommended that the effective period for a Declaration of Security be either 90 days or the term for which a vessel's service

to an OCS facility is contracted, whichever is greater. Two commenters recommended allowing ferry service operators and facility operators to enact pre-executed MARSEC Level 2 condition agreements rather than initiating a new Declaration of Security at every MARSEC Level change.

We disagree with these comments and believe that continuing Declaration of Security agreements between vessel and facility owners and operators should be periodically reviewed to respond to the frequent changes in operations, personnel, and other conditions. We believe that the Declaration of Security ensures essential security-related coordination and communication among vessels and facilities. Renewing a continuing Declaration of Security agreement requires only a brief interaction between vessel and facility owners and operators to review the essential elements of the agreement. Additionally, at a heightened MARSEC Level, that threat must be assessed and a new Declaration of Security must be completed. Less frequent review, such as during an annual or biannual review of the Vessel Security Plan, does not provide adequate oversight of the Declaration of Security agreement to ensure all parties are aware of their security responsibilities.

Five commenters requested that § 104.255(c) and (d) be amended so that a Declaration of Security need not be exchanged when conditions (*e.g.*, adverse weather) would preclude the exchange of the Declaration of Security.

We are not amending § 104.255(c) and (d) because as stated in § 104.205(b), if in the professional judgment of the Master a conflict between any safety and security requirements applicable to the vessel arises during its operations, the Master may give precedence to measures intended to maintain the safety of the vessel and take such temporary security measures as deemed best under all circumstances. Therefore, if the Declaration of Security between a vessel and facility could not be safely exchanged, the Master would not need to exchange the Declaration of Security before the interface. However, under §§ 104.205(b)(1), (b)(2), and (b)(3), the Master would have to inform the nearest COTP of the delay in exchanging the Declaration of Security, meet alternative security measures considered commensurate with the prevailing MARSEC Level, and ensure that the COTP was satisfied with the ultimate resolution. In reviewing this provision, we realized that a similar provision to balance safety and security was not included in parts 105 or 106. We have amended these parts to give the owners or operators of facilities the responsibility of resolving conflicts between safety and security.

Five commenters asked whether a company could have an agreement with a facility that outlines the responsibilities of all the company's vessels instead of a separate Declaration of Security for each vessel. The commenters stated that this would make the Declaration of Security more manageable for companies, vessels, and facilities that frequently interface with each other. One commenter raised a similar concern regarding barges and tugs conducting bunkering operations. One commenter suggested that Declarations of Security not be required when the vessels and ''their docking facilities'' share a common owner.

As stated in §§ 104.255(e), 105.245(e), and 106.250(e), at MARSEC Levels 1 and 2, owners or operators may establish continuing Declaration of Security procedures for vessels and facilities that frequently interface with each other. These sections do not preclude owners and operators from developing Declaration of Security procedures that could apply to vessels and facilities that frequently interface. However, as stated in §§ 104.255(c) and (d), 105.245(d), and 106.250(d), at MARSEC Level 3, all vessels and facilities required to comply with parts 104, 105, and 106 must enact a Declaration of Security agreement each time they interface. We believe that, even when under common ownership, vessels and facilities must coordinate security measures at higher MARSEC Levels and therefore should execute Declarations of Security. For MARSEC Level 1, only cruise ships and vessels carrying Certain Dangerous Cargoes (CDC) in bulk, and facilities that receive them, even when under common ownership, are required to complete a Declaration of Security each time they interface.

Two commenters did not support the restriction on the Facility Security Officer from being able to delegate authority to other security personnel in periods of MARSEC Levels 2 and 3. The commenters suggested that the Coast Guard use the same language in § 105.245(b), which allows the Facility Security Officer to delegate authority to a designated representative to sign and implement a Declaration of Security at MARSEC Levels 2 and 3.

Section 105.205 allows the Facility Security Officer to delegate security duties to other facility personnel. This delegation applies to the authority of the Facility Security Officer to sign and implement a Declaration of Security at MARSEC Levels 2 and 3. In order to clarify the regulations, however, we have amended § 105.245(d) to include the language found in § 105.245(b), allowing the Facility Security Officer to delegate this authority. We have also made the same change in § 106.250(d).

Three commenters suggested that the regulation should require that the Vessel Security Officer and Facility Security Officer have verified—via e-mail, phone, or other suitable means prior to the vessel's arrival in the port—that the provisions of the Declaration of Security remain valid.

We disagree that there is a need to specify the means of communicating between the Vessel Security Officer and the Facility Security Officer about the provisions of the Declaration of Security. To maintain flexibility, the regulations neither preclude nor mandate a specific means to use when discussing a Declaration of Security.

Eight commenters stated that there is significant confusion regarding the requirements to complete Declarations of Security, especially when dealing with unmanned barges. One commenter asked if a Declaration of Security is required when an unmanned barge is ''being dropped'' at a facility or when ''changing tows.''

We agree with the commenter and are amending §§ 104.255(c) and (d) and 106.250(d) to clarify that unmanned barges are not required to complete a Declaration of Security at any MARSEC Level. This aligns these requirements with those of § 105.245(d). At MARSEC Levels 2 and 3, a Declaration of Security must be completed whenever a manned vessel that must comply with this part is moored to a facility or for the duration of any vessel-to-vessel interface.

Three commenters asked when the Coast Guard would communicate standards for U.S. flag vessels and facilities as to the timing and format of a Declaration of Security. One commenter requested information about how Declaration of Security requirements will be communicated to and coordinated with vessels that do not regularly call on U.S. ports and specific facilities.

As specified in § 101.505, the format of a Declaration of Security is described in SOLAS Chapter XI–2, Regulation 10, and the ISPS Code. The timing requirements for the Declaration of Security are specified in §§ 104.255 and 105.245. The format for a Declaration of Security can be found as an appendix to the ISPS Code. We agree that the format requirement was not clearly included in § 101.505(a) when we called out the incorporation by reference. Therefore,

we have explicitly included a reference to the format in § 101.505(b).

One commenter wanted to know who will become the arbiter in the event of a disagreement between a vessel and a facility, or between two vessels, in regards to the Declaration of Security.

We do not anticipate this will be a frequent problem. The regulations do not provide for or specify an arbiter in the event that an agreement cannot be reached for a Declaration of Security. It is important to note that failure to resolve any such disagreement prior to the vessel-to-facility interface may result in civil penalties or other sanctions.

Five commenters suggested that we add language to the requirements for security systems and equipment maintenance in §§ 105.250 and 106.255 to allow facility and OCS facility owners or operators to develop and follow other procedures which the owner or operator has found to be more appropriate through experience or other means.

The intent of the security systems and equipment maintenance requirement is to require the use of the manufacturer's approved procedures for maintenance. If owners or operators have found other methods to be more appropriate, they may apply for equivalents following the procedures in §§ 105.135 or 106.130.

One commenter suggested that the Coast Guard establish additional criteria for certain expensive security equipment (such as access controls, lighting, and surveillance). The commenter said this would be helpful in ensuring a minimum compliance standard for those equipment elements that will be most costly to owners and operators.

Our regulations set performance standards. Some industry standards already exist or are being developed by trade or standards-setting organizations. Owners and operators may assess their own security needs and the measures that best meet those needs, given the particular characteristics and unique operations of their vessels or facilities.

One commenter stated that § 105.255(a) regarding access control should explicitly state that the implementation of security measures should be based on the type of cargo handled and the Facility Security Assessment.

We are not amending § 105.255(a) because, through the development of the Facility Security Assessment and Facility Security Plan, the cargo handled should be a primary consideration of a facility's vulnerability to a transportation security incident. The security measures implemented will be based on the Facility Security Assessment and Facility Security Plan, which expressly account for the facility's specific operations.

We received nine comments dealing with facility access control as it pertains to identification checks. Seven commenters asked us to add regulatory language to stipulate what will be accepted forms of identification for representatives from Federal agencies, because there is no standardized requirement for these representatives to carry their agency identification at all times and some agencies believe an officer in uniform and carrying a badge should be sufficient identification to gain access to a facility. One commenter suggested that security plans include access control measures specifically aimed at fumigators.

As part of the requirements for access control in § 105.255(e)(3), a facility owner or operator must conduct a check of the identification of any person seeking to enter the facility, including vessel passengers and crew, facility employees, Federal agency representatives, vendors (such as fumigators), personnel duly authorized by the cognizant authority, and visitors. We have provided minimum standards for identification in § 101.515, which must be met by all persons requesting access. This includes Federal agency representatives, and means that just a uniform will not be sufficient to meet the minimum standard set in § 101.515, and only those badges meeting that standard will be acceptable.

It should be noted that, with respect to Federal agency representatives, we have amended § 101.515 by adding a new provision to clarify that the identification and access control requirements of this subchapter must not be used to delay or obstruct authorized law enforcement officials from being granted access to the vessel, facility, or OCS facility. Authorized law enforcement officials are those individuals who have the legal authority to go on the vessel, facility, or OCS facility for purposes of enforcing or assisting in enforcing any applicable laws. This authority is evident by the presentation of identification and credentials that meet the requirements of § 101.515, as well as other factors such as the uniforms and markings on law enforcement vehicles and vessels. Delaying or obstructing access to authorized law enforcement officials by requiring independent verification or validation of their identification, credential, or purposes for gaining access could undermine compliance and inspection efforts, be contrary to enhancing security in some instances, and be contrary to law. Failure or refusal to permit an authorized law enforcement official presenting proper identification to enter or board a vessel, facility, or OCS facility will subject the operator or owner of the vessel, facility, or OCS facility to the penalties provided in law. In addition, an owner or operator of a vessel (including the Master), facility, or OCS facility that reasonably suspects individuals of using false law enforcement identification or impersonating a law enforcement official to gain unauthorized access, should report such concerns immediately to the COTP.

Seven commenters suggested that, instead of requiring disciplinary measures to discourage abuse of identification systems, the Coast Guard should merely require companies to develop policies and procedures that discourage abuse. One commenter opposed provisions of these rules relating to identification checks of passengers and workers. The commenter stated that these provisions threaten constitutional rights to privacy, travel, and association, and are too broad for their purpose. The commenter argued that identification methods are inaccurate or unproven and can be abused, and that the costs of requiring identification checks outweigh the proven benefit.

We recognize the seriousness of the commenters' concerns, but disagree that provisions for checking passenger and worker identification should be withdrawn. Identification checks, by themselves, may not ensure effective access control, but they can be critically important in attaining access control. Our rules implement the MTSA and the ISPS Code by requiring vessel and facility owners and operators to include access control measures in their security plans. However, instead of mandating uniform national measures, we leave owners and operators free to choose their own access control measures. In addition, our rules contain several provisions that work in favor of privacy. Identification systems must use disciplinary measures to discourage abuse. Owners and operators can take advantage of rules allowing for the use of alternatives, equivalents, and waivers. Passenger and ferry vessel owners or operators are specifically authorized to develop alternatives to passenger identification checks and screening. Signage requirements ensure that passengers and workers will have advance notice of their liability for screening or inspection. Vessel owners and operators are required to give particular consideration to the convenience, comfort, and personal privacy of vessel personnel. Taken as a whole, these rules strike the proper

balance between implementing the MTSA's provisions for deterring transportation security incidents and preserving constitutional rights to privacy, travel, and association.

Four commenters asked for amendments to §§ 105.255(c)(2) and 106.260(c)(2) to include coordination with aircraft identification systems, when practicable, in addition to coordination with vessel identification systems as a required access control measure.

We agree with the commenters, and have amended §§ 105.255(c)(2) and 106.260(c)(2) to reflect this clarification. Most facilities, including OCS facilities, are accessible by multiple forms of transportation; therefore, coordination with identification systems used by those forms of transportation should enhance security.

One commenter asked if the Coast Guard would issue guidelines on screening.

The Coast Guard intends to coordinate with the Transportation Security Administration (TSA) and the Bureau of Customs and Border Protection (BCBP) in publishing guidance on screening to ensure that such guidance is consistent with intermodal policies and standards of TSA, and the standards and programs of BCBP for the screening of international passengers and cargo. Additionally, TSA is developing a list of items prohibited from being carried on board passenger vessels.

One commenter asked if there is a difference between the terms ''screening'' and ''inspection'' as used in § 104.265(e)(2), requiring conspicuously posted signs.

In 33 CFR subchapter H, the terms ''screening'' and ''inspection'' fully reflect the types of examinations that may be conducted under §§ 104.265, 105.255, and 106.260. Therefore, both terms are included to maximize clarity.

We received 10 comments regarding signage and posting of signs. Ten commenters stated that posting new signs required in § 104.265(e)(2) aboard unmanned barges to describe security measures in place is unnecessary because existing signs indicate that visitors are not permitted aboard. One commenter stated that the requirements in § 105.255(e)(2) regarding signage are too prescriptive and believed that facilities should be allowed to post signs as they deem necessary and not attract additional attention.

We disagree with the comment and believe that signs, appropriately posted, serve as a deterrent against unauthorized entry and provide awareness for facility security personnel. Although signage is primarily aimed at manned vessels, we extended this to all vessels because all vessels may on occasion be boarded by persons whose entry would subject them to possible screening. If existing signs accomplish this, the owner or operator is in compliance with the regulation.

We received two comments on vehicle searches. One commenter stated that vehicle screenings prior to boarding vessels ''are not warranted.'' One commenter suggested that the government is responsible for vehicle inspections and searches.

We disagree. Vehicles may be used to cause a transportation security incident. Therefore the screening of vehicles is warranted, and we have required the owner or operator to ensure this is done.

We received comments from other Federal agencies requesting that government-owned vehicles on official business be exempt from screening or inspection. We have amended section 105.255(e)(1) and (f)(7) accordingly. This does not exempt government personnel from presenting identification credentials, on demand, for entry onto vessels or facilities.

One commenter requested that owners or operators of small private facilities be exempt from the requirement to screen baggage, under § 105.255, because they do not deal with passengers.

Section 105.255(e)(1) states that owners or operators must screen baggage at the rate specified in the facility's approved security plan. Because Facility Security Plans are tailored to the specific facility, it is possible that an approved plan could have very different baggage-screening provisions from a larger facility that serves multiple vessels. It is also possible that an approved plan could have provisions for coordinating baggage screening with vessels. However, we consider baggage screening an imperative security provision and have not exempted it in this final rule.

Eight commenters suggested that access control aboard OCS facilities only be required when an unscheduled vessel is forced to discharge passengers for emergency reasons, and that the provisions of § 105.255 and § 106.260 be the responsibility of the shoreside facility and the vessel owner. The commenter stated that the need to duplicate the process at the facility is wasteful. The commenters asked for amendments to § 105.255 and § 106.260 in order to make clear that security controls should be established shoreside.

The Coast Guard believes that access control must be established to ensure that the people on board any vessel or facility are identified and permitted to be there. We recognize that access control and personal identification checks at both the shoreside and OCS facility could be duplicative, and did not intend to require this duplication, unless needed. Our regulations provide the flexibility to integrate shoreside screening into OCS facility security measures. We note, however, that the OCS facility owner or operator retains ultimate responsibility for ensuring that access control measures are implemented. This means that, where integrated shoreside screening is implemented, the OCS facility owner or operator should have a means to verify that the shoreside screening is being done in accordance with the Facility Security Plan and these regulations. Even if integrated shoreside screening is arranged, the Facility Security Plan must also contain access control provisions for vessels or other types of transportation conveyances that do not regularly call on the OCS facility or might not use the designated shoreside screening process.

One commenter asked for clarification on whether fencing was required and the dates by which the construction of the fences should be accomplished, stating that fences could make normal business operations difficult.

The Coast Guard does not mandate fencing to prevent unauthorized access. Section 105.255 gives facility owners and operators the flexibility to implement those security measures that meet the specific performance standards for access control. Facilities must submit their security plan for approval by the Coast Guard on or before December 31, 2003, and must be operating under a plan approved by the Coast Guard by July 1, 2004. If a facility owner or operator intends to make physical improvements, such as installing fencing, but has not done so, this can be addressed in the Facility Security Plan. However, until improvements have been made, equivalent security measures must be explained in the Facility Security Plan and implemented.

In reviewing sections dealing with access control requirements, we noted an omission in text and are amending § 104.265(b) to include a verb in the sentence for clarity. We are also mirroring this clarification in §§ 105.255(b) and 106.260(b).

Nine commenters were concerned about the designation of restricted areas. Six commenters requested that the Coast Guard clarify the wording in

§§ 104.270(b) and 105.260(b) that states ''Restricted areas must include, as appropriate:'' because it is contradictory to impose a requirement with the word ''must,'' while offering the flexibility by stating ''as appropriate.'' One commenter stated that the provision that allows owners or operators to designate their entire facility as a restricted area could result in areas being designated as restricted without any legitimate security reason.

We believe that the current wording of §§ 104.270(b), 105.260(b), and 106.265(b) is acceptable. While the word ''must'' requires owners or operators to designate restricted areas, the word ''appropriate'' allows flexibility for owners or operators to restrict areas that are significant to their operations. The regulations provide for the entire facility to be designated as a restricted area, whereby a facility owner or operator would then be required to provide appropriate security measures to prevent unauthorized access into the entire facility.

One commenter asked us to provide alternatives, including the use of locks, to the restricted-access control measures specified in § 105.260(d).

The measures specified in § 105.260(d) do not constitute an exclusive list; however, in § 105.260(d)(2) we specifically provide for the use of measures to secure access points that are not in active use, and this could include the use of locks.

One commenter stated that his facility could not implement the requirements of § 105.260(e)(4) regarding restricting parking adjacent to vessels because the facility does not own the area where those vehicles are parked. The commenter also stated that the facility does not own the area where vessels are unloaded.

Designating the area of the facility that is adjacent to a vessel a restricted area is of importance because vehicles may be used to cause a transportation security incident. Section 105.260(b)(1) requires, as appropriate, that areas adjacent to a vessel be designated as a restricted area. Section 105.260(e)(4) further emphasizes the importance of limiting parking near a vessel during heightened threat. The specific security measures implemented at the facility will be based on the Facility Security Assessment and Facility Security Plan, which expressly account for the facility's specific operations and the vessels it receives. Under certain circumstances, as documented in the facility security assessment report, it may be appropriate to park a properly screened vehicle alongside a vessel. However, in other circumstances it may be inappropriate based on the type of cargo and vessel involved and the current MARSEC Level. One way for a facility operator to restrict parking near the vessel is to coordinate arrangements with the neighboring facility owner so the area can be controlled. The Coast Guard will take into account issues concerning the individual responsibilities and jurisdiction of operators and the owners when reviewing the Facility Security Plan.

Two commenters suggested that § 105.265, ''Security Measures for Handling Cargo'' should state that it is applicable only to facilities that receive vessels that handle cargo.

We agree that only facilities that receive vessels that handle cargo should comply with § 105.265. Facilities that receive vessels that do not handle cargo do not have to comply with § 105.265.

One commenter stated that the language in § 105.265(c) does not define the term ''active.'' The commenter wanted to know if the Coast Guard has developed an internal interpretation as to what is meant by ''active'' access points and whether it is appropriate to assume that the facility has the discretion of identifying those access points.

Access points to the facility that can be used for entering or exiting a facility should be blocked during heightened security levels. Any access point to a facility that can be used for entering or exiting a facility is considered an active access point.

Three commenters asked for editorial revisions in § 105.265(a). One commenter asked us to revise § 105.265(a)(2), which requires facilities to ''prevent cargo that is not meant for carriage from being accepted and stored.'' The commenter stated that the section, as written, would preclude facilities from engaging in some legitimate activities such as warehousing or temporary storage. One commenter suggested adding the word ''unidentified'' before the word ''cargo'' in § 105.265(a)(6) because some facilities only store goods and do not transport them. One commenter asked why the term ''location'' is used twice in § 105.265(a)(9).

We agree with the commenter that many waterfront facilities may be used for warehousing or temporary storage of goods, etc., that are not intended for carriage in maritime commerce. We have amended § 105.265(a)(2) to make it clear that facility owners or operators can store items that will not be shipped in maritime commerce if they do so knowingly. We have not added the word ''unidentified'' in this amendment because only identified items can be stored. We have reviewed and agree that the use of the word ''location'' twice in § 105.265(a)(9) is redundant. We have amended this section to remove the redundancy.

One commenter asked us to confirm its inference that § 105.265(a)(6) allows for the legitimate accumulation of cargo for a yet to be determined vessel, or for operational reasons by either the vessel or facility operator.

We agree with the commenter's interpretation. Facility owners or operators may accept cargo that does not have a confirmed date for loading, if they determine that it is appropriate to do so under the circumstances.

Three commenters requested clarification on the restrictions of cargo entering a facility. Two commenters asked us to clarify the requirements in § 105.265(a)(6) so that its restriction on entry of cargo to a facility would only apply to break-bulk and packaged cargo shipments, and would exclude bulk-liquid facilities. One commenter asked us to exempt bulk cargo facilities from the requirements of § 105.265.

We disagree with the commenters. The intent of this regulation is to ensure that only those cargoes that have a legitimate reason for being at the facility are allowed entry. By excluding certain cargoes, as suggested by the commenters, the intent of the regulation would be weakened, and we do not see an improvement in security derived from the suggestion.

Fourteen commenters stated that the requirements in § 104.275 regarding cargo handling are overly burdensome and difficult to implement. One commenter suggested that the regulations ensure that empty containers be opened and inspected. Three commenters stated it is not possible for a vessel owner or operator to ensure that cargo is not tampered with prior to being loaded, to identify cargo being brought on board, or to check cargo for dangerous substances. One commenter stated that imports should be screened at the loading port, not after they arrive in the U.S., and that the U.S. focus should be on knowing with whom vessel owners and operators are doing business. One commenter urged that the final rule clarify whether coordinating security measures with the shipper or other responsible party is mandatory. One commenter stated that checking cargo for dangerous substances and devices is a governmental function. Three commenters stated that the requirement in § 105.265(a)(9) to maintain a continuous inventory of all dangerous goods and hazardous substances passing through the facility

is unnecessarily burdensome and should be deleted.

We recognize that screening for dangerous substances and devices is a complex and technically difficult task to implement. We have amended §§ 104.275 and 105.265 to clarify that cargo checks should be focused on the cargo, containers, or other cargo transport units arriving at or on the facility or vessel to detect evidence of tampering or to prevent cargo that is not meant for carriage from being accepted and stored at the facility without the knowing consent of the facility owner or operator. Screening of vehicles remains a requirement under these regulations; however, checking cargo containers may be limited to external examinations to detect signs of tampering, including checking of the integrity of seals. The issue of cargo screening will be addressed by TSA, BCBP, and other appropriate agencies through programs such as the Customs-Trade Partnership Against Terrorism (C–TPAT), the Container Security Initiative (CSI), performance standards developed under section 111 of the MTSA, and the Secure Systems of Transportation (SST) under 46 U.S.C. 70116. The requirement to ensure the coordination of security measures with the shipper or other party aligns with the ISPS Code. It is intended that provisions be coordinated when there are regular or repeated cargo operations with the same shipper. This facilitates security between the shipper and the facility, therefore, we have made this type of coordination mandatory. We have, however, amended §§ 104.275(a)(5) and 105.265(a)(8) to clarify that this coordination is only required for frequent shippers. The requirements in § 105.265(a)(9) may be challenging to implement, but the requirements are consistent with the ISPS Code, part B. We believe that a continuous inventory of goods is important to the security of facilities, especially for those that handle dangerous goods or hazardous substances and may be involved in a transportation security incident.

Ten commenters were concerned about health and occupational safety during inspection of cargo spaces. Five commenters raised this concern in connection with tank barges under § 104.275(b) and (c) vessel security measures for handling cargo. Two other commenters raised the concern under the facility cargo handling requirements in § 105.265(b)(1) and (b)(4).

Under § 104.275, we provide flexibility in how cargo spaces must be checked. This allows owners and operators to take safety into account in devising cargo check procedures. To emphasize safety during cargo operations, we have amended §§ 104.275(b)(1) and 105.265(b)(1) to reflect that a check on cargo and cargo spaces should be done unless it is unsafe to do so. We did not amend § 104.275(b)(4) in a similar manner because if the check of seals or other methods used to prevent tampering is unsafe for vessel personnel to conduct, they should liaise with the facility to ensure this is done.

One commenter requested changes in the MARSEC Level 2 cargo handling provisions of § 105.265(c). The commenter stated that the container segregation provisions of paragraph (c)(5) are impractical, and that the provision in paragraph (c)(7) for limiting the number of locations where dangerous goods or hazardous substances are stored would merely create easier targets for terrorists.

We agree that the requirement in § 105.265(c)(5) could be impractical for the majority of cargo operations; however, it should be noted that this section lists various methods to use in order to meet MARSEC Level 2. It was neither an exhaustive list nor a mandated one. To list an alternative cargo handling option, we have changed § 105.265(c)(5) by removing the requirement for cargo segregation and replacing it with the option to coordinate cargo shipments with regular shippers as was mentioned in § 105.265(a). This change now aligns the facility cargo handling security measures with those found in § 104.275 for vessels, as appropriate. We did not amend § 105.265(c)(7) because we believe there may be circumstances when the requirement is desirable because it facilitates other security measures such as monitoring and access control.

Two commenters stated that fleeting facilities should not be exempt from the requirements for security measures for delivery of vessel stores and bunkers because at some fleeting areas, stores are put on board vessels, surveyors collect samples, and equipment repairs are completed.

We believe that certain activities, such as provisions being put on board vessels, surveyors collecting samples, and equipment repairs done at the fleeting facility, occur so infrequently that they would be adequately covered by the security measures of the involved vessels or barges. Those fleeting facilities where these activities routinely occur should take those activities into consideration in their Facility Security Assessments.

One commenter stated that, as detailed in § 105.270, the facility's responsibilities for the security of vessel stores are excessive. The commenter said that anything beyond validating the vendor's identity and the stores order should be the government's responsibility.

We disagree with the commenter. A facility is a vital link in the transfer of vessel stores from vendor to vessel. Our requirements focus on the safety and integrity of stores brought into the facility and on preserving stores from tampering while they are at the facility, and therefore help protect both the facility and those whom it serves.

Two commenters stated that the facility's responsibilities for the security of vessel stores as detailed in § 105.270 are less restrictive than security measures for handling cargo. The commenter recommended combining the security requirements for stores and bunkers with those requirements for handling cargo. One commenter stated that the delivery of vessel stores and bunkers are usually coordinated with the ship's agent and not the facility, and therefore the facility owner or operator should not be required to ensure that security measures are implemented.

We disagree with the commenters. We allow for the owner or operator to enact scalable measures that can provide for different levels of security. The owner or operator may enact more stringent measures for stores and bunkers to match those for handling cargo if desired. However, procedures for vessel stores and bunkers are appreciably different than procedures for most other cargo handling and usually involve different personnel; therefore, we have retained the language in § 105.270. Further, we believe that the facility owner or operator has the responsibility for providing appropriate security measures for all deliveries on the facility.

We received ten comments questioning our use of the words ''continuous'' or ''continuously'' in the regulations. Four commenters requested that we amend language in § 104.245(b) by replacing the word ''continuous'' with the word ''continual,'' stating that ''continuous'' implies that there must be constant and uninterrupted communications. One commenter requested that we amend language in § 104.285(a)(1) by replacing the word ''continuously'' with the word ''continually,'' stating that ''continuously'' implies that there must be constant and uninterrupted application of the security measure. One commenter requested that we amend language in § 106.275 to replace the word ''continuously'' with the word ''frequently.'' One commenter

recommended that instead of using the word ''continuously'' in § 105.275, the Coast Guard revise the definition of monitor to mean a ''systematic process for providing surveillance for a facility.'' One commenter stated that the continuous monitoring requirements in § 106.275 place a significant burden on the owners and operators of OCS facilities because increased staff levels would be necessary to keep watch not only in the facility, but also in the surrounding area.

We did not amend the language in §§ 104.245(b) 105.235(b), or 106.240(b) because the sections require that communications systems and procedures must allow for ''effective and continuous communications.'' This means that vessel owners or operators must always be able to communicate, not that they must always be communicating. Similarly, §§ 104.285, 105.275, and 106.275, as a general requirement, require vessel and facility owners or operators to have the capability to ''continuously monitor.'' This means that vessel and facility owners or operators must always be able to monitor. We have amended §§ 104.285(b)(4) and 106.275(b)(4) to use the word ''continuously'' instead of ''continually'' to be consistent with § 105.275(b)(1). This general requirement is further refined in §§ 104.285, 105.275,and 106.275, in that the Vessel and Facility Security Plans must detail the measures sufficient to meet the monitoring requirements at the three MARSEC Levels.

One commenter asked how the Coast Guard defines ''critical vessel-to-facility interface operations'' that need to be maintained during transportation security incidents.

Section 104.290(a) requires vessel owners or operators to ensure that the Vessel Security Officer and vessel security personnel can respond to threats and breaches of security and maintain ''critical vessel and vessel-to-facility interface operations,'' while paragraph (e) of that section requires non-critical operations to be secured in order to focus response on critical operations. The Coast Guard does not define the critical operations that need to be maintained during security incidents, because these will vary depending on a vessel's physical and operational characteristics, but requires each vessel to provide its own definition as part of its Vessel Security Plan. Section 104.305(d) requires that they discuss and evaluate in the Vessel Security Assessment report key vessel measures and operations, including operations involving other vessels or facilities.

Two commenters supported the exemption from this part for those facilities that have designated public access areas. One commenter suggested that ferries be exempted from screening unaccompanied baggage. One commenter recommended that we explicitly exempt public access areas from MARSEC Level 2 and 3 passenger screening and identification requirements.

We do not intend to exempt unaccompanied baggage from screening since we believe that it is absolutely necessary to screen unaccompanied baggage. We have amended the regulations to clarify the requirements for passenger vessels, ferries, and public access areas in § 105.285 and to exempt public access areas from the MARSEC Level 2 and 3 passenger screening and identification requirements in § 105.110.

One commenter asked us to define the term ''CDC facility'' used in § 105.295, and recommended that the section should apply only when CDC is actually present on a facility.

A CDC facility is a ''facility'' that handles ''certain dangerous cargo (CDC).'' Both of these terms are defined in § 101.105. We disagree that § 105.295 should apply only when CDC is actually present on a facility, because the measures required by the section must be taken in advance so that they can be implemented when CDC is present. It should be noted that when defining what constitutes a CDC, we referenced § 160.204 to ensure consistency in Title 33. We are constantly reviewing and, when necessary, revising the CDC list based on additional threat and technological information. Changes to § 160.204 would affect the regulations in 33 CFR subchapter H because any changes to the CDC list would also affect the applicability of subchapter H. Any such change would be the subject of a future rulemaking.

Six commenters inquired whether § 105.295(b)(2) requires personnel to be present or if electronic equipment, such as cameras or monitors watched by personnel, may be used to satisfy the requirement.

Cameras or monitors watched by personnel could be used to meet the requirements of § 105.275, Security measures for monitoring, for MARSEC Level 1. However, the intent of § 105.295(b)(2), Additional requirements—Certain Dangerous Cargo (CDC) facilities, is to provide a higher level of security at MARSEC Level 2 or 3 for facilities handling CDCs. Guards and patrols provide a visible deterrent which we believe is an appropriate higher standard of security for CDC facilities because of the risk they pose if involved in a transportation security incident. To clarify, we are amending § 105.295(b)(2) by removing the words ''guard or'' to eliminate any ambiguity as to the need for a physical presence at a facility that handles CDC during MARSEC Levels 2 and 3. The intent of these regulations is to provide a higher level of security for these facilities.

Five commenters stated that the additional requirements for barges in fleeting facilities (as stated in § 105.296) should only apply to CDC barges at MARSEC Level 1.

We disagree that the additional requirements for barges in fleeting facilities should only apply to CDC barges at MARSEC Level 1. In order to protect the facilities and barges, the requirements applying to barges carrying CDC should also apply to those carrying cargoes subject to subchapters D or O at MARSEC Level 1.

Nine commenters stated that barges with CDC, subject to 46 CFR subchapters D or O, should be segregated ''as appropriate,'' or based on the results of a security assessment, because segregation of tank barges can be impractical when trying to assemble or break down a mixed tow and may only create a more attractive target for would-be terrorists.

We recognize that facility owners and operators need flexibility in storing and handling barges and have modified § 105.296 by removing the requirement to segregate barges carrying CDC or cargos subject to 46 CFR subchapters D or O. Instead, we have required barges carrying these cargoes to be kept within a restricted area. This will allow facility owners and operators to store other barges within the restricted area. The regulations do not prohibit or require that the assembly or break down of tows occur within the restricted area. The security measures that will be applied while assembling or breaking tows must be addressed in the Facility Security Plan. We have also amended, for clarity, the requirements of part 105 so that it only applies to those barges that carry cargo regulated under 46 CFR subchapters D or O in bulk by amending §§ 105.105 and 105.296.

Six commenters asked us to clarify whether § 105.296 requires one towing vessel per 100 barges that carry CDC.

As written, § 105.296 requires one towing vessel per 100 barges, which means any type of barge, irrespective of cargo. It should be noted that this requirement conforms to the existing 1-to-100 tug/barge ratio that already exists in 33 CFR part 165 during high water conditions.

Two commenters stated that most barge fleeting facilities are difficult to

access by land and patrolling the shoreside is impractical. One commenter stated that it would be very difficult to coordinate shore-side patrols when the facility owner does not own the land.

We recognize that it may be difficult to monitor or patrol remote barge fleeting facilities. However, we have determined that barge fleeting facilities may be involved in a transportation security incident if fleeting barges carry dangerous goods or hazardous substances. Section 105.296 does allow facility owners and operators to use monitoring in remote locations as an alternative to shore-side patrols.

Two commenters encouraged the formal training of Coast Guard Port State Control officers in enforcing these regulations to include the details of security systems and procedures, the details of security equipment, and the elements of knowledge required of the Vessel Security Officer and Facility Security Officer.

The Coast Guard conducts comprehensive training of its personnel involved in ensuring the safety and security of facilities and commercial vessels. We continually update our curriculum to encompass new requirements, such as the Port State Control provisions of the ISPS Code. This training, however, is beyond the scope of this rule.

Subpart C—Facility Security Assessment (FSA)

This subpart describes the content and procedures for Facility Security Assessments.

We received 22 comments pertaining to sensitive security information and its disclosure. Twelve commenters requested that the Coast Guard delete the requirements that the Facility Security Assessment or Vessel Security Assessment be included in the submission of the Facility Security Plan or Vessel Security Plan respectively, stating that the security assessments are of such a sensitive nature that risk of disclosure is too great. Four commenters stated that the form CG–6025 ''Facility Vulnerability and Security Measures Summary'' should be sufficient for the needs of the Coast Guard and would promote facility security. Two commenters stated that there are too many ways for the general public to gain access to sensitive security information. One commenter stated that it was not clear how the Coast Guard would safeguard sensitive security information. One commenter stated that training for personnel in parts of the Facility Security Plan should not require access to the Facility Security Assessment.

Sections 104.405, 105.405, and 106.405 require that the security assessment report be submitted with the respective security plans. We believe that the security assessment report must be submitted as part of the security plan approval process because it is used to determine if the security plan adequately addresses the security requirements of the regulations. The information provided in form CG–6025 will be used to assist in the development of AMS Plans. The security assessments are not required to be submitted. To clarify that the report, not the assessment, is what must be submitted with the Vessel or Facility Security Plan, we are amending § 104.305 to add the word ''report'' where appropriate. We have also amended §§ 105.305 and 106.305 for facilities and OCS facilities, respectively. Additionally, we have amended these sections so that the Facility Security Assessment report requirements mirror the Vessel Security Assessment report requirements. All of these requirements were included in our original submission to OMB for ''Collection of Information'' approval, and there is no associated increase in burden in our collection of information summary. We also acknowledge that security assessments and security assessment reports have sensitive security information within them, and that they should be protected from unauthorized access under §§ 104.400(c), 105.400(c), and 106.400(c). Therefore, we are amending §§ 104.305, 105.305, and 106.305 to clarify that all security assessments, security assessment reports, and security plans need to be protected from unauthorized disclosure. The Coast Guard has already instituted measures to protect sensitive security information, such as security assessment reports and security plans, from disclosure.

Ten commenters addressed the disclosure of security plan information. One commenter seemed to advocate making security plans public. One commenter was concerned that plans will be disclosed under the Freedom of Information Act (FOIA). One commenter requested that mariners and other employees whose normal working conditions are altered by a Vessel or Facility Security Plan be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because of past experience with State laws that require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter is particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of possible State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is generally exempt from disclosure under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

Information designated as ''sensitive security information'' is generally exempt under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public.

Two commenters stated that our regulations suggest that information designated as sensitive security information is exempt from FOIA. One commenter suggested that all documentation submitted under this rule be done pursuant to the Homeland Security Act of 2002, to afford a more legally definite protection against disclosure.

''Sensitive security information'' is a designation mandated by regulations promulgated by TSA and may be found

in 49 CFR part 1520. These regulations state that information designated as sensitive security information may not be shared with the general public. FOIA exempts from its mandatory release provisions those items that other laws forbid from public release. Thus, security assessments, security assessment reports, and security plans, which should be designated as sensitive security information, are all exempt from release under FOIA.

We received four comments regarding the use of third party companies to conduct security assessments. Two commenters asked if we will provide a list of acceptable assessment companies because of the concern that the vulnerability assessment could ''fall into the wrong hands.'' One commenter requested that the regulations define ''appropriate skills'' that a third party must have in order to aid in the development of security assessments. One commenter stated that the person or company conducting the assessment might not be reliable.

We will not be providing a list of acceptable assessment companies, nor will we define ''appropriate skills.'' It is the responsibility of the vessel or facility owner or operator to vet companies that assist them in their security assessments. In the temporary interim rule (68 FR 39254), we stated, ''we reference ISPS Code, part B, paragraph 4.5, as a list of competencies all owners and operators should use to guide their decision on hiring a company to assist with meeting the regulations. We may provide further guidance on competencies for maritime security organizations, as necessary, but do not intend to list organizations, provide standards within the regulations, or certify organizations.'' We require security assessments to be protected from unauthorized disclosures and will enforce this requirement, including through the penalties provision, in § 101.415.

Six commenters suggested that a template for security assessments and plans be provided for affected entities. One commenter specifically asked for guidance templates for barge fleeting facilities.

We intend to develop guidelines for the development of security assessments and plans. Additionally, the regulations allow owners and operators of facilities and vessels to implement Alternative Security Programs. This would allow owners and operators to participate in a development process with other industry groups, associations, or organizations. We anticipate that one such Alternative Security Program will include a template for barge fleeting facilities.

One commenter requested that we allow a group of facilities that combine to act as an identified unit to be considered as an equivalency or add a definition of either ''port'' or ''port authority.'' The commenter also stated that part 105 should allow port security plans, developed by local government port authorities and approved by State authorities, to serve as equivalent security measures.

We do not agree with adding a definition of ''port'' to recognize a group of facilities that combine to act as an identified unit. However, groups of facilities may work together to enhance their collective security and achieve the performance standards in the regulations. Locally developed port security plans may serve as an excellent starting point for those facilities located within the jurisdiction of a port authority. We believe that the provisions of §§ 105.300(b), 105.310(b), and 105.400(a) permit the COTP to approve a Facility Security Plan that covers multiple facilities, such as a co-located group of facilities that share security arrangements, provided that the particular aspects and operations of each subordinate facility are addressed in the common assessment and security plan. A single Facility Security Officer for the port or port cooperative should be designated to facilitate this common arrangement. Finally, local security programs developed by entities such as a port authority or a port cooperative may be submitted to the Coast Guard for consideration as Alternative Security Programs in accordance with § 101.120(c).

Four commenters requested that the Company and the Facility Security Officers be given access to the ''vulnerability assessment'' done by the COTP to facilitate the development of the Facility Security Plan and ensure that the Facility Security Plan does not conflict with the AMS Plan.

The AMS Assessments directed by the Coast Guard are broader in scope than the required Facility Security Assessments. The AMS Assessment is used in the development of the AMS Plan, and it is a collaborative effort between Federal, State, Indian Tribal and local agencies as well as vessel and facility owners and operators and other interested stakeholders. The AMS Assessments are sensitive security information. Access to these assessments, therefore, is limited under 49 CFR part 1520 to those persons with a legitimate need-to-know (*e.g.*, Facility Security Officers who need to align Facility Security Plans with the AMS Plan may be deemed to have need to know sensitive security information). In addition, the Coast Guard will identify potential conflicts between security plans and the AMS Plan during the Facility Security Plan approval process.

Five commenters were concerned about the ability of private industry to assess threats. One commenter asked that we change § 105.300(d)(1) to read ''known security threats and known patterns,'' stating that private industry has not been provided detailed knowledge on security threats and patterns. One commenter stated that vessels and facilities are not capable of determining their risks because they lack knowledge about the activities of individuals seeking to do harm from locations off the vessel or facility. One commenter asserted that scenarios ''outside the domain of control'' of a vessel or facility owner or operator cannot be countered by private industry, and stated that the expertise requirement for those conducting risk assessments should be suggested, not mandatory. One commenter stated that industry should not be required to address mitigation strategies for chemical, nuclear, or biological weapons because they lack the necessary expertise.

The intent of § 105.300(d)(1) is that those facility personnel involved in conducting the Facility Security Assessment should have expertise in security threats and patterns or be able to draw upon third parties who have this expertise. Amending the language as suggested is not necessary because, as allowed in § 105.300(c), the Facility Security Officer may use third parties in any aspect of the Facility Security Assessment if that party has the appropriate skills and knowledge. Expertise in assessing risks is crucial for establishing security measures to accurately counter the risks, and therefore we believe that expertise is required.

One commenter requested that local agencies, rather than the Coast Guard, analyze security requirements, stating that his company has already spent a considerable amount of money complying with local standards.

We disagree that local agencies should have the sole responsibility to review, approve, and ensure implementation of security measures as required under part 105. The MTSA gave the Coast Guard the authority to require areas, vessels, and facilities to implement security measures. We do not intend to delegate this authority to State or local agencies because we believe the system, as mandated by the MTSA, provides the necessary

nationwide consistency to strengthen maritime security without putting any particular State or region at a competitive economic disadvantage. We believe, however, that local security considerations are imperative in security plans. Our regulations do not mandate specific security measures; rather, they require the development and implementation of security assessments and plans. It is possible that security measures taken to date to fulfill State or local requirements will be sufficient to meet the new Federal requirements. These security measures may be accounted for in security assessments and should be fully documented in the security plans submitted to the Coast Guard. Local COTPs, who will review Facility Security Assessment reports and Facility Security Plans submitted under part 105, will be able to assess compliance and alignment with local, State, and Federal requirements.

One commenter asked for clarification of the terms ''self assessments,'' ''security assessments,'' ''risk/threat assessments,'' and ''on-scene surveys.''

Risk/threat assessments and self assessments are not specifically defined in the regulations, but refer to the general practices of assessing where a vessel or facility is at risk. The assessments required in parts 104 through 106 must take into account threats, consequences, and vulnerabilities; therefore, they are most appropriately titled ''security assessments.'' This title also aligns with the ISPS Code. To clarify that §§ 101.510 and 105.205 address security assessments required by subchapter H, we have amended these sections to change the term ''risk'' to the more accurate term ''security.'' ''On-scene surveys'' are explained in the security assessment requirements of parts 104, 105, and 106. As explained in § 104.305(b), for example, the purpose of an on-scene survey is to ''verify or collect information'' required to compile background information and ''consists of an actual survey that examines and evaluates existing vessel protective measures, procedures, and operations.'' An on-scene survey is part of a security assessment.

One commenter stated that if a Facility Security Assessment determines a threat that is outside the scope of what is appropriate to include in the Facility Security Plan, the threat should be included as part of the AMS Plan.

We agree with the commenter. The AMS Plan is more general in nature and takes into account those threats that may affect the entire port, or a segment of the port. As such, the AMS Plan should be designed to take into account those threats that are larger in scope than those threats that should be considered for individual facilities. To focus the Facility Security Assessments on their port interface rather than the broader requirement, we have amended §§ 105.305 (c)(2)(viii), (ix) and 106.305 (c)(2)(v) to reflect that the assessment of the facility should take into consideration the use of the facility as a transfer point for a weapon of mass destruction and the impact of a vessel blocking the entrance to or area surrounding a facility. Two commenters addressed the requirements of analyzing a facility's threats under § 105.305(c)(2) and (c)(3). One commenter said that the analysis of threats required by § 105.305(c)(2) and (c)(3) should be addressed in the AMS Plan and not in the Facility Security Plan because threat assessment is a government responsibility. One commenter stated that the analysis of threat information should not be required in the Facility Security Assessment because the government is best situated to assess threats.

We agree that threat analysis is part of the AMS Plan. However, a facility's security also depends in large part on how well the owner or operator assesses vulnerabilities that only he or she would know about and the consequences that could occur from the unique operations or location of the facility, as well as on the assessment of threats identified by the government. The facility's own assessment is imperative to the development of the Facility Security Plan that must identify these unique aspects and address them in a manner appropriate for the facility. Threat information, which will be issued by the Coast Guard or other agencies having knowledge of this type of information, should be considered in the Facility Security Assessment. In general, however, lacking specific threat assessment information, the facility owner or operator must assume that threats will increase against the vulnerable part of the facility and develop progressively increasing security measures, as appropriate.

Three commenters asked how a company should assess the ''worse-case scenario'' regarding barges and their cargo.

There are various methods of conducting a security assessment, several of which we outlined in § 101.510. These assessment tools, the assessment requirements themselves as discussed in §§ 104.305, 105.305, and 106.305, and other assessment tools that have been developed by industry should enable owners or operators to evaluate the vulnerability and potential consequences of a transportation security incident involving the barge or the cargo it carries.

Three commenters noted that vulnerability assessments should take into account the type of cargo handled or transported, especially if the cargo is CDC. One commenter stated that CDCs should be carefully considered. One commenter stated that the Coast Guard should also take into account the type of cargo handled during our review of a Facility Security Assessment and Plan. One commenter noted that there is a lower risk associated with Great Lakes facilities that primarily handle dry-bulk cargoes.

We agree that security assessments and security plans should take into account the type of cargo that is handled to maximize the focus of security efforts. During our review of all assessments and plans, the Coast Guard will take into consideration types of cargo handled or transported.

After further review of subpart C of parts 104, 105, and 106, we noted the omission of detailing when the security assessment must be reviewed. Therefore, we are amending §§ 104.310, 105.310, and 106.310 to state that the security assessment must be reviewed and updated each time the security plan is revised and when the security plan is submitted for re-approval.

Two commenters asked for clarification regarding the reference to § 105.415, ''Amendment and audit,'' found in § 105.310(a).

We reviewed § 105.310(a) and have corrected the reference to read ''§ 105.410.'' We meant for the Facility Security Assessment report to be included with the Facility Security Plan when that plan is submitted to the Coast Guard for approval under § 105.410. We are also amending §§ 105.415 and 106.310 to make similar corrections to references.

Subpart D—Facility Security Plan (FSP)

This subpart describes the content, format, and processing requirements for Facility Security Plans.

We received five comments asking which entity, the owner or operator, assumes responsibility for compliance and facility security. Two commenters noted that multiple companies may temporarily lease a ''dock facility,'' and questioned if each is required to submit a Facility Security Plan along with the ''dock owner.'' One commenter stated that the landlord of a facility should develop and implement a security plan and the tenants at the facility should be included in the landlord's plan. One commenter believed that 33 CFR part

105 should be clarified to state that the facility owner is the entity responsible for implementing and ensuring compliance with the facility security requirements and facility operators should be requested to address activities that are otherwise under their control, and noted that the facility operator lacked the jurisdiction to implement security measures for the entire facility.

The regulations require the owner or operator of a facility to submit a Facility Security Plan. If the facility is comprised of independent operators, then each operator is required to submit a Facility Security Plan unless the owner submits a plan that encompasses the operations of each operator. The submission of the security plan should be coordinated between the owner and operators. The Coast Guard will take into account issues concerning the individual responsibilities and jurisdiction of operators and owners when reviewing the security plan.

One commenter requested that the ''Facility Vulnerability and Security Measures Summary'' (form CG–6025) be available in electronic format and that electronic submission be available.

We agree, and have placed the form on our Port Security Directorate Web site: *http://www.uscg.mil/hq/g-m/mp/index.htm.* We are not, at this time, able to accept these forms electronically because we do not have a site capable of receiving sensitive security information. We are working on this issue, however, and hope to have this capability in the future.

We received three comments regarding access by individuals to and from vessels moored at a facility. Two commenters recommended the language in § 105.405(a)(6) be modified by adding: ''including procedures for personnel access through the facility to and from the ship'' to the end of the existing verbiage. One commenter recommended that facility owners or operators should limit access to vessels moored at the facility to those individuals and organizations that conduct business with the vessel, contending that the word ''visitors'' may be too broad.

The intent of the wording in § 105.405(a)(10) was to encompass the concept of ''including procedures for personnel access through the facility to and from the ship.'' However, the regulations provide flexibility to allow the facility to limit access to those visitors that have official business with the vessel.

Three commenters recommended that this rule be amended to close ''the gap'' in the plan-approval process to address the period of time between December 29, 2003, and July 1, 2004. Another commenter suggested submitting the Facility Security Plan for review and approval for a new facility ''within six months of the facility owner's or operator's intent of operating it.''

We agree that the regulations do not specify plan-submission lead time for vessels, facilities, and OCS facilities that come into operation after December 29, 2003, and before July 1, 2004. The owners or operators of such vessels, facilities, and OCS facilities are responsible for ensuring they have the necessary security plans submitted and approved by July 1, 2004, if they intend to operate. We have amended §§ 104.410, 105.410, and 106.410 to clarify the plan-submission requirements for the various dates before July 1, 2004, and after this date.

One commenter stated that § 105.410 regarding the Facility Security Plan approval process does not address what would occur if the COTP fails to approve or disapprove a plan in a timely manner and recommended that the rule include language stating that a timely submitted plan that is not approved by the COTP within 24 months be deemed to have interim approval.

As stated in § 105.120(b), if the plan has not been reviewed prior to July 1, 2004, the facility owner or operator will receive an acknowledgement letter from the COTP stating that the COTP has received the Facility Security Plan for review and approval. The facility may continue to operate so long as it remains in compliance with the submitted Facility Security Plan. We do not agree with the commenter that after 24 months, the facility should have interim approval by default.

Thirty commenters commended the Coast Guard for providing an option for an Alternative Security Program as described in § 101.120(b) and urged the Coast Guard to approve these programs as soon as possible.

We believe the provisions in § 101.120(b) will provide greater flexibility and will help owners and operators meet the requirements of these rules. We will review Alternative Security Program submissions in a timely manner to determine if they comply with the security regulations for their particular segment. Additionally, we have amended §§ 104.410(a)(2), 105.410(a)(2), 106.410(a)(2), 105.115(a), and 106.110(a) to clarify the submission requirements for the Alternative Security Program.

One commenter recommended that the COTP not be required to approve Facility Security Plans; rather, the COTP should ''spot-check'' facilities to see if they adhere to their plans' procedures.

We disagree. The ISPS Code requires contracting governments to approve facility security plans for facilities within their jurisdiction. Approval of a Facility Security Plan by the COTP ensures that the facility's plan aligns with the requirements of the ISPS Code, the MTSA, and these final rules. Compliance by the facility with the terms of its approved plan will be the subject of periodic Coast Guard inspection.

After further review of the ''Submission and approval'' requirements in §§ 101.120, 104.410, 105.410, and 106.410, we have amended the requirements to clarify that security plan submissions can be returned for revision during the approval process.

We received 15 comments about the process of amending and updating the security plans. Five commenters requested that they be exempted from auditing whenever they make minimal changes to the security plans. Two commenters stated that it should not be necessary to conduct both an amendment review and a full audit of security plans upon a change in ownership or operational control. Three commenters requested a *de minimis* exemption to the requirement that security plans be audited whenever there are modifications to the vessel or facility. Seven commenters stated that the rule should be revised to allow the immediate implementation of security measures without having to propose an amendment to the security plans at least 30 days before the change is to become effective. The commenters stated that there is something ''conceptually wrong'' with an owner or operator having to submit proposed amendments to security plans for approval when the amendments are deemed necessary to protect vessels or facilities.

The regulations require that upon a change in ownership of a vessel or facility, the security plan must be audited and include the name and contact information of the new owner or operator. This will enable the Coast Guard to have the most current contact information. Auditing the security plan is required to ensure that any changes in personnel or operations made by the new owner or operator do not conflict with the approved security plan. The regulations state that the security plan must be audited if there have been significant modifications to the vessel or facility, including, but not limited to, their physical structure, emergency response procedures, security measures, or operations. These all represent significant modifications. Therefore, we are not going to create an exception in the regulation. We recognize that the

regulations requiring that proposed amendments to security plans be submitted for approval 30 days before implementation could be construed as an impediment to taking necessary security measures in a timely manner. The intent of this requirement is to ensure that amendments to the security plans are reviewed to ensure they are consistent with and supportable by the security assessments. It is not intended to be, nor should it be, interpreted as precluding the owner or operator from the timely implementation of additional security measures above and beyond those enumerated in the approved security plan to address exigent security situations. Accordingly we have amended §§ 104.415, 105.415, and 106.415 to add a clause that allows for the immediate implementation of additional security measures to address exigent security situations.

One commenter stated that insignificant failures in the Facility Security Plan discovered during exercises should not result in the need to resubmit a Facility Security Plan.

We believe that any failure of the Facility Security Plan during an exercise is a significant failure and, therefore, should be corrected. Section 105.415 provides that the COTP may determine that an amendment to a Facility Security Plan is required to maintain the facility's security.

Five commenters asked about the need for independent auditors under §§ 104.415 and 105.415. Two commenters recommended that we amend § 105.415(b)(4)(ii) to read ''not have regularly assigned duties for that facility'' as this would allow flexibility for audits to be conducted by individuals with security-related duties as long as those duties are not at that facility.

We believe that independent auditors are one, but not the only, way to conduct audits of Facility Security Plans. In both §§ 104.415 and 105.415, paragraph (b)(4) lists three requirements for auditors that, for example, could be met by employees of the same owner or operator who do not work at the facility or on the vessel where the audit is being conducted. Additionally, paragraph (b)(4) states that all of these requirements do not need to be met if impracticable due to the facility's size or the nature of the company.

One commenter believed that § 105.415 does not provide enough flexibility in performing the annual audits of Facility Security Plans.

We disagree that the requirements of § 105.415 are not flexible enough with respect to auditing, insofar as it provides an exception to the requirements when they are ''impractical due to the size and nature of the company or the facility personnel.''

Additional Changes

After further review of this part, we made several non-substantive editorial changes, such as adding plurals and fixing noun, verb, and subject agreements. These sections include: §§ 105.105(c)(1), 105.106(a), 105.205(c)(3), 105.275(a)(1), and 105.400(b). In addition, the part heading in this part has been amended to align with all the part headings within this subchapter.

Regulatory Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of Department of Homeland Security. A ''Cost Assessment and Final Regulatory Flexibility Analysis'' is available in the docket as indicated under **ADDRESSES**. A summary of comments on the assessment, our responses, and a summary of the assessment follow.

Two commenters addressed the burdens involved in moving from MARSEC Level 1 to MARSEC Level 2. One strongly urged the Coast Guard to be cautious whenever contemplating raising the MARSEC Level because the commenter claimed that we estimated the cost to the maritime industry of increasing the MARSEC Level from 1 to 2 will be $31 million per day. The other commenter expressed doubt that a facility's security would be substantially increased by hiring local security personnel ''as required'' at MARSEC Level 2.

We agree that each MARSEC Level elevation may have serious economic impacts on the maritime industry. We make MARSEC Level changes in conjunction with Department of Homeland Security to ensure that the maritime sector has deterrent measures in place commensurate with the nature of the threat to it and our nation. The financial burden to the maritime sector is one of many factors that we consider when balancing security measure requirements with economic impacts. Furthermore, we disagree with the first commenter's statement of our cost assessment to the maritime industry for an increase in MARSEC Level 1 to MARSEC Level 2. In the Cost Assessment and Initial Regulatory Flexibility Act analyses for the temporary interim rules, we estimated that the daily cost of elevating the MARSEC Level from 1 to 2 is $16 million. We also disagree with the second commenter's inference that hiring local security personnel to guard a facility is required at MARSEC Level 2. Section 105.255 lists ''assigning additional personnel to guard access points'' as one of the enhanced security measures that a facility may take at MARSEC Level 2, but this can be done by reassigning the facility's own staff rather than by hiring local security personnel. Moreover it is only one of several MARSEC Level 2 security enhancements listed in § 105.255(f), which is not an exclusive list.

One commenter suggested taking into greater account the risk factors of the facility and vessel as a whole, rather than simply relying on one factor, such as the capacity of a vessel as well as the cost-benefit of facility security to all of the business entities that make up a facility.

The Coast Guard considered an extensive list of risk factors when developing these regulations including, but not limited to, vessel and facility type, the nature of the commerce in which the entity is engaged, potential trade routes, accessibility of facilities, gross tonnage, and passenger capacity. Our Cost Assessments and Regulatory Flexibility Act Analyses for both the temporary interim rules and the final rules are available in the docket, and they account for companies as whole business entities, not individual vessels or facilities.

One commenter stated that the Coast Guard should consider the impact of security regulations on facilities that face international competition.

The Coast Guard has determined that these regulations will impose significant costs on regulated facilities, and has considered the consequences of that cost. We assessed the financial impact to small businesses in the Initial and Final Cost Assessments and Regulatory Flexibility Analyses, which are found in the dockets for these rules. We were unable to specifically determine, however, which facilities face international competition.

Three commenters stated that the cost-benefit assessment in the temporary interim rule (68 FR 39276) (part 101) is questionable. One commenter noted that we did not use the most recent industry data. Two commenters stated that cost estimates might be close to accurate but that the benefits were based on assumptions that are difficult to measure.

We used the most reliable economic data available to us from the U.S. Census Bureau among other government data sources. In the notice of public meeting (67 FR 78742, December 20, 2002), we presented a preliminary cost analysis and requested comments and data be submitted to assist us in drafting our estimates. We amended our cost estimates incorporating comments and input we received. While the analysis may or may not be useful to the reader, we must develop a regulatory assessment for all significant rules, as required by Executive Order 12866.

One commenter stated that Florida laws require a double-gating standard for certain shipyards, which poses an economic burden on affected facilities, and the State of Florida has yet to conduct an economic assessment of the economic burden.

The economic impact of State security requirements is beyond the scope of these rules and is best addressed to the States imposing such requirements.

Cost Assessment

For the purposes of good business practice or pursuant to regulations promulgated by other Federal and State agencies, many companies already have spent a substantial amount of money and resources to upgrade and improve security. The costs shown in this assessment do not include the security measures these companies have already taken to enhance security. Because the changes in this final rule do not affect the original cost estimates presented in the temporary interim rule (68 FR 39319) (part 105), the costs remain unchanged.

We realize that every company engaged in maritime commerce will not implement this final rule exactly as presented in the assessment. Depending on each company's choices, some companies could spend much less than what is estimated herein while others could spend significantly more. In general, we assume that each company will implement this final rule differently based on the type of facilities it owns or operates and whether it engages in international or domestic trade.

The population affected by this final rule is approximately 5,000 facilities, and the estimated Present Value cost to these facilities is approximately present value $5.399 billion (2003 to 2012, 7 percent discount rate). Approximately present value $2.718 billion of this total is attributed to facilities engaged in the transfer of hazardous bulk liquids (petroleum, edible oils, and liquified gases). The remaining present value $2.681 billion is attributable to facilities that receive vessels on international voyages or carry more than 150 passengers, or fleet barges carrying certain dangerous cargoes or subchapter D or O cargoes in bulk. During the initial year of compliance, the cost is attributable to purchasing and installing equipment, hiring security officers, and preparing paperwork. The initial cost is an estimated $1.125 billion (non-discounted, $498 million for the facilities with hazardous bulk liquids, $627 million for the other facilities). Following initial implementation, the annual cost is an estimated $656 million (non-discounted, $341 million for the facilities with hazardous bulk liquids, $315 million for the other facilities).

Approximately 51 percent of the initial cost is for installing or upgrading equipment, 30 percent for hiring and training Facility Security Officers, 14 percent for hiring additional security guards, and 5 percent for paperwork (Facility Security Assessments and Facility Security Plans). Following the first year, approximately 52 percent of the annual cost is for Facility Security Officers (cost and training), 24 percent for security guards, 9 percent for paperwork (updating Facility Security Assessments and Facility Security Plans), 9 percent for operations and maintenance for equipment, and approximately 6 percent for drills. The cost of facility security consists primarily of installing or upgrading equipment and designating Facility Security Officers.

Benefit Assessment

This rule is one of six final rules that implement national maritime security initiatives concerning general provisions, Area Maritime Security, vessels, facilities, Outer Continental Shelf facilities, and Automatic Identification System (AIS). The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to ''Applicability of National Maritime Security Initiatives'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a ''family'' of rules that will reinforce and support one another in their implementation. We have ensured, however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to ''Benefit Assessment'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39274) (part 101).

We determined annual risk points reduced for each of the six final rules using the N–RAT. The benefits are apportioned among the Vessel, Facility, OCS Facility, AMS, and AIS requirements. As shown in Table 1, the implementation of facility security for the affected population reduces 473,659 risk points annually through 2012. The benefits attributable for part 101, General Provisions, were not considered separately since it is an overarching section for all the parts.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Vessels	778,633	3,385	3,385	3,385	1,317
Facilities	2,025	469,686	.....	2,025	
OCS Facilities	41	.....	9,903	.....	
Port Areas	587	587	.....	129,792	105

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES—Continued

Maritime entity	Annual risk points reduced by final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Total	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented the cost effectiveness, or dollars per risk point reduced, in two ways: first, we compared the first-year cost and first-year benefit because first-year cost is the highest in our assessment as companies develop security plans and purchase equipment. Second, we compared the 10-year present value cost and the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES

Item	Final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS*
First-Year Cost (millions)	$218	$1,125	$3	$120	$30
First-Year Benefit	781,285	473,659	13,288	135,202	1,422
First-Year Cost Effectiveness ($/Risk Point Reduced)	279	2,375	205	890	21,224
10-Year Present Value Cost (millions)	1,368	5,399	37	477	26
10-Year Present Value Benefit	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year Present Value Cost Effectiveness ($/Risk Point Reduced)	233	1,517	368	469	2,427

*Cost less monetized safety benefit.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. We have reviewed this final rule for potential economic impacts on small entities. A Final Regulatory Flexibility Analysis discussing the impact of this final rule on small entities is available in the docket where indicated under **ADDRESSES.**

Our assessment (copy available in the docket) concludes that implementing this final rule may have a significant economic impact on a substantial number of small entities.

There are approximately 1,200 companies that own facilities that will be affected by the final rule. We researched these companies, and found revenue and business size data for 581 of them (48 percent). Of the 581, we determined that 296 are small entities according to Small Business Administration standards.

The cost of the final rule to each facility is dependent on the security measures already in place at each facility and on the relevant risk to a maritime transportation security incident. The final rule calls for specific security measures to be in place at each affected facility. We realize, however, that most facilities already have implemented security measures that may satisfy the requirements of this rule. For example, we note that every facility will develop a Facility Security Assessment and a Facility Security Plan, but not all of them may need to install or upgrade fences or lighting equipment.

For this reason, we analyzed the small entities under two scenarios, a higher cost and lower cost scenarios. The higher cost scenario uses an estimated initial cost of $1,942,500 and its corresponding annual cost of $742,700. The higher cost scenario assumed extensive capital improvements will be undertaken by the facilities in addition to the cost of complying with the minimum requirements (assigning Facility Security Officers, drafting Facility Security Assessments, drafting Facility Security Plans, conducting training, performing drills, and completing Declarations of Security). The lower cost scenario used an initial cost of $133,500 and annual cost of $156,800 for complying with the minimum requirements in the final rule.

In the higher cost scenario, we estimated that the annual revenues of 94 percent of the small entities may be impacted initially by more than 5 percent, while the annual revenues of 80 percent of the small entities may be impacted annually by more than 5 percent. In the lower cost scenario, we found that the annual revenues of 57 percent of the small entities may be impacted initially and annually by more than 5 percent.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be

required to take in order to comply with each respective final rule. We have not created Compliance Guides for part 101 or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

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

Collection of Information

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The final rules are covered by two existing OMB-approved collections—1625–0100 (formerly 2115–0557) and 1625–0077 (formerly 2115–0622).

We received comments regarding collection of information; these comments are discussed within the ''Discussion of Comments and Changes'' section of this preamble. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

Federalism

Executive Order 13132 requires the Coast Guard to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, the Coast Guard may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications and a substantial direct effect on the States. This final rule requires those States that own or operate vessels or facilities that may be involved in a transportation security incident to conduct security assessments of their vessels and facilities and to develop security plans for their protection. These plans must contain measures that will be implemented at each of the three MARSEC Levels and must be reviewed and approved by the Coast Guard.

Additionally, the Coast Guard has reviewed the MTSA with a view to whether we may construe it as non-preemptive of State authority over the same subject matter. We have determined that it would be inconsistent with the federalism principles stated in the Executive Order to construe the MTSA as not preempting State regulations that conflict with the regulations in this final rule. This is because owners or operators of facilities and vessels—that are subject to the requirements for conducting security assessments, planning to secure their facilities and vessels against threats revealed by those assessments, and complying with the standards, both performance and specific construction, design, equipment, and operating requirements—must have one uniform, national standard that they must meet. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they moved from State to State. Therefore, we believe that the federalism principles enumerated by the Supreme Court in *U.S.* v. *Locke*, 529 U.S. 89 (2000) regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulation and control of vessels for security purposes. But, the same considerations apply to facilities, at least insofar as a State law or regulation applicable to the same subject for the purpose of protecting the security of the facility would conflict with a Federal regulation; in other words, it would either actually conflict or would frustrate an overriding Federal need for uniformity.

Finally, it is important to note that the regulations implemented by this final rule bear on national and international commerce where there is no constitutional presumption of concurrent State regulation. Many aspects of these regulations are based on the U.S. international treaty obligations regarding vessel and port facility security contained in SOLAS and the complementary ISPS Code. These international obligations reinforce the need for uniformity regarding maritime commerce.

Notwithstanding the foregoing preemption determinations and findings, the Coast Guard has consulted extensively with appropriate State officials, as well as private stakeholders during the development of this final rule. For these final rules, we met with the National Conference of State Legislatures (NCSL) Taskforce on Protecting Democracy on July 21, 2003, and presented briefings on the temporary interim rules to the NCSL's Transportation Committee on July 23, 2003. We also briefed several hundred State legislators at the American Legislative Exchange Council on August 1, 2003. We held a public meeting on July 23, 2003, with invitation letters to all State homeland security representatives. A few State representatives attended this meeting and submitted comments to a public docket prior to the close of the comment period. The State comments to the docket focused on a wide range of concerns including consistency with international requirements and the protection of sensitive security information.

One commenter stated that there is a ''real cost'' to implementing security measures, and it is significant. The commenter stated that there is a disparity between Federal funding dedicated to air transportation and maritime transportation and that the Federal government should fund maritime security at a level commensurate with the relative security risk assigned to the maritime transportation mode. Further, the commenter stated that, in 2002, some State-owned ferries carried as many passengers as one of the State's busiest international airports and provided unique mass transit services; therefore, the commenter supported the Alternative Security Program provisions of the temporary interim rule to enable a tailored approach to security.

The viability of a ferry system to provide mass transit to a large population is undeniable and easily rivals other transportation modes. We developed the Alternative Security Program to encompass operations such as ferry systems. We recognize the concern about the Federal funding

disparity between the maritime transportation mode and other modes; however, this disparity is beyond the scope of this rule.

One commenter stated that while he appreciated the urgency of developing and implementing maritime security plans, the State would find it difficult to complete them based on budget cycles and building permit requirements. At the briefings discussed above, several NCSL representatives also voiced concerns over the short implementation period. In contrast, other NCSL representatives were concerned that security requirements were not being implemented soon enough.

The implementation timeline of these final rules follows the mandates of the MTSA and aligns with international implementation requirements. While budget-cycle and permit considerations are beyond the scope of this rule, the flexibility of these performance-based regulations should enable the majority of owners and operators to implement the requirements using operational controls, rather than more costly physical improvement alternatives.

One commenter stated that there should be national uniformity in implementing security regulations on international shipping.

As stated in the temporary interim rule (68 FR 39277), we believe that the federalism principles enumerated by the Supreme Court in *U.S.* v. *Locke,* 529 U.S. 89 (2000), regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulations and control of vessels for security purposes. It would be inconsistent with the federalism principles stated in Executive Order 13132 to construe the MTSA as not preempting State regulations that conflict with this regulation. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they move from state to state.

Other concerns raised by the NCSL at the briefings mentioned above included questions on how the Coast Guard will enforce security standards on foreign flag vessels and how multinational crewmember credentials will be checked.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, Congress explicitly found that ''it is in the best interests of the U.S. to implement new international instruments that establish'' a maritime security system. We agree and will exercise Port State Control to ensure that foreign vessels have approved plans and have implemented adequate security standards on which these rules are based. If vessels do not meet our security requirements, the Coast Guard may prevent those vessels from entering the U.S. or take other necessary measures that may result in vessel delays or detentions. The Coast Guard will not hesitate to exercise this authority in appropriate cases. We discuss the ongoing initiatives of ILO and the requirements under the MTSA to develop seafarers' identification criteria in the temporary interim rule titled ''Implementation of National maritime Security Initiatives'' (68 FR 39264) (part 101). We will continue to work with other agencies to coordinate seafarer access and credentialing issues. These final rules will also ensure that vessel and facility owners and operators take an active role in deterring unauthorized access.

One commenter, as well as participants of the NCSL, noted that some State constitutions afford greater privacy protections than the U.S. Constitution and that, because State officers may conduct vehicle screenings, State constitutions will govern the legality of the screening. The commenter also noted that the regulations provide little guidance on the scope of vehicle screening required under the regulations.

The MTSA and this final rule are consistent with the liberties provided by the U.S. Constitution. If a State constitutional provision frustrates the implementation of any requirement in the final rule, then the provision is preempted pursuant to Article 6, Section 2, of the U.S. Constitution. The Coast Guard intends to coordinate with TSA and BCBP in publishing guidance on screening.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This final rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the U.S. (2 U.S.C. 1503(5)).

We did not receive comments regarding the Unfunded Mandates Reform Act.

Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We received comments regarding the taking of private property; these comments are discussed within the ''Discussion of Comments and Changes'' section of this preamble.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this final rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive comments regarding the protection of children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant

energy action'' under that order. Although it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security.

We did not receive comments regarding energy effects.

Environment

We have considered the environmental impact of this final rule and concluded that under figure 2–1, paragraphs (34)(a) and (34)(c), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule concerns security assessments, plans, training, and the establishment of security positions that will contribute to a higher level of marine safety and security for U.S. ports. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION.**

This final rule will not significantly impact the coastal zone. Further, the execution of this final rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

List of Subjects in 33 CFR Part 105

Facilities, Maritime security, Reporting and recordkeeping requirements, Security measures.

Dated: October 8, 2003.

Thomas H. Collins

Admiral, Coast Guard, Commandant.

■ Accordingly, the interim rule adding 33 CFR part 105 that was published at 68 FR 39315 on July 1, 2003, and amended at 68 FR 41916 on July 16, 2003, is adopted as a final rule with the following changes:

PART 105—MARITIME SECURITY: FACILITIES

■ 1. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise the heading to part 105 to read as shown above.

■ 3. In § 105.105—

■ a. Revise paragraphs (a)(2), (a)(3), and (a)(4) to read as set out below;

■ b. Add paragraphs (a)(5) and (a)(6) to read as set out below;

■ c. Revise paragraphs (c)(1) and (c)(3)(i) to read as set out below;

■ d. Remove paragraph (c)(3)(ii);

■ e. Redesignate paragraph (c)(3)(iii) as paragraph (c)(3)(ii):

§ 105.105 Applicability.

(a) * * *

(2) Facility that receives vessels certificated to carry more than 150 passengers, except those vessels not carrying and not embarking or disembarking passengers at the facility;

(3) Facility that receives vessels subject to the International Convention for Safety of Life at Sea, 1974, chapter XI;

(4) Facility that receives foreign cargo vessels greater than 100 gross register tons;

(5) Facility that receives U.S. cargo vessels, greater than 100 gross register tons, subject to 46 CFR chapter I, subchapter I, except for those facilities that receive only commercial fishing vessels inspected under 46 CFR part 105; or

(6) Barge fleeting facility that receives barges carrying, in bulk, cargoes regulated by 46 CFR chapter I, subchapters D or O, or Certain Dangerous Cargoes.

* * * * *

(c) * * *

(1) A facility owned or operated by the U.S. that is used primarily for military purposes.

* * * * *

(3) * * *

(i) The facility is engaged solely in the support of exploration, development, or production of oil and natural gas and transports or stores quantities of hazardous materials that do not meet or exceed those specified in 49 CFR 172.800(b)(1) through (b)(6); or

* * * * *

■ 4. In § 105.106—

■ a. Revise paragraph (a), to read as set out below; and

■ b. In paragraph (b), after the word ''provides'', add the word ''pedestrian''.

§ 105.106 Public access areas.

(a) A facility serving ferries or passenger vessels certificated to carry more than 150 passengers, other than cruise ships, may designate an area within the facility as a public access area.

* * * * *

■ 5. In § 105.110, revise paragraph (b) and add paragraphs (c), (d), and (e) to read as follows:

§ 105.110 Exemptions.

* * * * *

(b) A public access area designated under § 105.106 is exempt from the requirements for screening of persons, baggage, and personal effects and identification of persons in § 105.255(c), (e)(1), (e)(3), (f)(1), and (g)(1) and § 105.285(a)(1).

(c) An owner or operator of any general shipyard facility as defined in § 101.105 is exempt from the requirements of this part unless the facility:

(1) Is subject to parts 126, 127, or 154 of this chapter; or

(2) Provides any other service to vessels subject to part 104 of this subchapter not related to construction, repair, rehabilitation, refurbishment, or rebuilding.

(d) *Public access facility.* (1) The COTP may exempt a public access facility from the requirements of this part, including establishing conditions for which such an exemption is granted, to ensure that adequate security is maintained.

(2) The owner or operator of any public access facility exempted under this section must:

(i) Comply with any COTP conditions for the exemption; and

(ii) Ensure that the cognizant COTP has the appropriate information for contacting the individual with security responsibilities for the public access facility at all times.

(3) The cognizant COTP may withdraw the exemption for a public access facility at any time the owner or operator fails to comply with any requirement of the COTP as a condition of the exemption or any measure ordered by the COTP pursuant to existing COTP authority.

(e) An owner or operator of a facility is not subject to this part if the facility receives only vessels to be laid-up, dismantled, or otherwise placed out of commission provided that the vessels are not carrying and do not receive cargo or passengers at that facility.

■ 6. In § 105.115—

■ a. Revise paragraph (a) to read as set out below; and

■ b. In paragraph (b), remove the date ''June 30, 2004'' and add, in its place, the date ''July 1, 2004'':

§ 105.115 Compliance dates.

(a) On or before December 31, 2003, facility owners or operators must submit to the cognizant COTP for each facility—

(1) The Facility Security Plan described in subpart D of this part for review and approval; or

(2) If intending to operate under an approved Alternative Security Program, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

* * * * *

§ 105.120 [Amended]

■ 7. In § 105.120—

■ a. In the introductory text, remove the words ''no later than'' and add, in their place, the words ''on or before''; and

■ b. In paragraph (c), after the words ''a copy of the Alternative Security Program the facility is using'', add the words '', including a facility specific security assessment report generated under the Alternative Security Program, as specified in § 101.120(b)(3) of this subchapter,''.

■ 8. Revise § 105.125 to read as follows:

§ 105.125 Noncompliance.

When a facility must temporarily deviate from the requirements of this part, the facility owner or operator must notify the cognizant COTP, and either suspend operations or request and receive permission from the COTP to continue operating.

■ 9. In § 105.200—

■ a. Revise paragraph (b)(7) to read as set out below;

■ b. In paragraph (b)(8), remove the word ''and'';

■ c. Revise paragraph (b)(9) to read as set out below; and

■ d. Add paragraphs (b)(10) and (b)(11) to read as follows:

§ 105.200 Owner or operator.

* * * * *

(b) * * *

(7) Ensure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with vessel operators in advance of a vessel's arrival. In coordinating such leave, facility owners or operators may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations. The text of these treaties can be found on the U.S. Department of State's website at *http://www.state.gov/s/l/24224.htm*;

* * * * *

(9) Ensure security for unattended vessels moored at the facility;

(10) Ensure the report of all breaches of security and transportation security incidents to the National Response Center in accordance with part 101 of this chapter; and

(11) Ensure consistency between security requirements and safety requirements.

§ 105.205 [Amended]

■ 10. In § 105.205—

■ a. In paragraph (b)(2)(iv), remove the word ''Risk'' and add, in its place, the word ''Security'';

■ b. In paragraph (c)(3), after the words ''if necessary'', remove the word ''if'' and add, in its place, the word ''that''; and

■ c. In paragraph (c)(11), remove the words ''Vessel Security Officers'' and add, in their place, the words ''Masters, Vessel Security Officers or their designated representatives''.

§ 105.215 [Amended]

■ 11. In § 105.215, in the introductory paragraph, after the words ''in the following'', add the words '', as appropriate''.

■ 12. In § 105.220, revise paragraph (a) to read as follows:

§ 105.220 Drill and exercise requirements.

(a) *General.* (1) Drills and exercises must test the proficiency of facility personnel in assigned security duties at all MARSEC Levels and the effective implementation of the Facility Security Plan (FSP). They must enable the Facility Security Officer (FSO) to identify any related security deficiencies that need to be addressed.

(2) A drill or exercise required by this section may be satisfied with the implementation of security measures required by the FSP as the result of an increase in the MARSEC Level, provided the facility reports attainment to the cognizant COTP.

* * * * *

§ 105.225 [Amended]

■ 13. In § 105.225(b)(1), remove the words ''each security training session'' and add, in their place, the words ''training under § 105.210''.

■ 14. Revise § 105.245(d) to read as follows:

§ 105.245 Declaration of Security (DoS).

* * * * *

(d) At MARSEC Levels 2 and 3, the FSOs, or their designated representatives, of facilities interfacing with manned vessels subject to part 104, of this subchapter must sign and implement DoSs as required in (b)(1) and (2) of this section.

* * * * *

§ 105.255 [Amended]

■ 15. In § 105.255—

■ a. In paragraph (b), after the words ''ensure that'', add the words ''the following are specified'';

■ b. In paragraph (b)(3), remove the words ''are established'';

■ c. In paragraph (c)(2), after the word ''vessels'', add the words ''or other transportation conveyances'';

■ d. In paragraph (e)(1), remove the words ''including delivery vehicles'' and, after the words ''approved FSP'' add the words '', excluding government-owned vehicles on official business when government personnel present identification credentials for entry''; and

■ e. In paragraph (f)(7), remove the word ''Screening'' and add, in its place, the words ''Except for government-owned vehicles on official business when government personnel present identification credentials for entry, screening''.

■ 16. In § 105.265—

■ a. In paragraph (a)(2), after the words ''stored at the facility'', add the words ''without the knowing consent of the facility owner or operator'';

■ b. Revise paragraphs (a)(8) and (a)(9) to read as set out below;

■ c. Remove paragraph (a)(10);

■ d. In paragraph (b)(1), remove the word ''Routinely'', and add, in its place, the words ''Unless unsafe to do so, routinely'' and remove the words ''to deter'' and add, in their place, the words ''for evidence of'';

■ e. In paragraph (c)(1), remove the word ''port'' and remove the words ''dangerous substances and devices to the facility and vessel'' and add, in their place, the words ''evidence of tampering''; and

■ f. Revise paragraph (c)(5) to read as follows:

§ 105.265 Security measures for handling cargo.

(a) * * *

(8) When there are regular or repeated cargo operations with the same shipper, coordinate security measures with the shipper or other responsible party in accordance with an established agreement and procedure; and

(9) Create, update, and maintain a continuous inventory of all dangerous goods and hazardous substances from receipt to delivery within the facility, giving the location of those dangerous goods and hazardous substances.

* * * * *

(c) * * *

(5) Coordinating enhanced security measures with the shipper or other responsible party in accordance with an established agreement and procedures;

* * * * *

§ 105.275 [Amended]

■ 17. In § 105.275(a) introductory text, after the word ''patrols,'', remove the word ''and''.

■ 18. In § 105.285—

■ a. In paragraph (a) introductory text, remove the words ''At MARSEC Level 1'' and add, in their place, the words ''At all MARSEC Levels'';

■ b. In paragraph (a)(1), remove the words ''In a facility with no public access area designated under § 105.106, establish'' and, add in their place, the word ''Establish'';

■ c. In paragraph (a)(5), remove the words ''and conduct screening of persons and personal effects, as needed''; and

■ d. Revise paragraphs (b) and (c) to read as follows:

§ 105.285 Additional requirements—passenger and ferry facilities.

* * * * *

(b) At MARSEC Level 2, in addition to the requirements in paragraph (a) of this section, the owner or operator of a passenger or ferry facility with a public access area designated under § 105.106 must increase the intensity of monitoring of the public access area.

(c) At MARSEC Level 3, in addition to the requirements in paragraph (a) of this section, the owner or operator of a passenger or ferry facility with a public access area designated under § 105.106 must increase the intensity of monitoring and assign additional security personnel to monitor the public access area.

§ 105.295 [Amended]

■ 19. In § 105.295(b)(2), remove the words ''guard or''.

■ 20. Revise § 105.296(a)(1) to read as follows:

§ 105.296 Additional requirements-barge facilities.

(a) * * *

(1) Designate one or more restricted areas within the barge fleeting facility to handle those barges carrying, in bulk, cargoes regulated by 46 CFR chapter I, subchapters D or O, or Certain Dangerous Cargoes;

* * * * *

■ 21. In § 105.305—

■ a. In paragraph (c)(2)(viii) remove the word ''Blockage'' and add, in its place, the words ''Impact on the facility and its operations due to a blockage'';

■ b. Revise paragraph (c)(2)(ix) to read as set out below; and

■ c. Add paragraphs (d)(3), (d)(4), (d)(5), and (e) to read as follows:

§ 105.305 Facility Security Assessment (FSA) requirements.

* * * * *

(c) * * *

(2) * * *

(ix) Use of the facility as a transfer point for nuclear, biological, radiological, explosive, or chemical weapons;

* * * * *

(d) * * *

(3) The FSA report must list the persons, activities, services, and operations that are important to protect, in each of the following categories:

(i) Facility personnel;

(ii) Passengers, visitors, vendors, repair technicians, vessel personnel, etc.;

(iii) Capacity to maintain emergency response;

(iv) Cargo, particularly dangerous goods and hazardous substances;

(v) Delivery of vessel stores;

(vi) Any facility security communication and surveillance systems; and

(vii) Any other facility security systems, if any.

(4) The FSA report must account for any vulnerabilities in the following areas:

(i) Conflicts between safety and security measures;

(ii) Conflicts between duties and security assignments;

(iii) The impact of watch-keeping duties and risk of fatigue on facility personnel alertness and performance;

(iv) Security training deficiencies; and

(v) Security equipment and systems, including communication systems.

(5) The FSA report must discuss and evaluate key facility measures and operations, including:

(i) Ensuring performance of all security duties;

(ii) Controlling access to the facility, through the use of identification systems or otherwise;

(iii) Controlling the embarkation of vessel personnel and other persons and their effects (including personal effects and baggage whether accompanied or unaccompanied);

(iv) Procedures for the handling of cargo and the delivery of vessel stores;

(v) Monitoring restricted areas to ensure that only authorized persons have access;

(vi) Monitoring the facility and areas adjacent to the pier; and

(vii) The ready availability of security communications, information, and equipment.

(e) The FSA, FSA report, and FSP must be protected from unauthorized access or disclosure.

■ 22. In § 105.310—

■ a. In paragraph (a), remove the words ''§ 105.415 of this part'' and add, in its place, the text ''§ 105.410 of this part''; and

■ b. Add paragraph (c) to read as follows:

§ 105.310 Submission requirements.

* * * * *

(c) The FSA must be reviewed and validated, and the FSA report must be updated each time the FSP is submitted for reapproval or revisions.

§ 105.400 [Amended]

■ 23. In § 105.400(b), in the second sentence remove the word ''Format'', and add, in its place, the word ''Information''.

■ 24. In § 105.410—

■ a. Revise paragraphs (a) and (b) to read as set out below;

■ b. In paragraph (c)(1), remove the text '', or'' and add, in its place, a semicolon;

■ c. Redesignate paragraph (c)(2) as paragraph (c)(3);

■ d. Add new paragraph (c)(2) to read as follows:

§ 105.410 Submission and approval.

(a) On or before December 31, 2003, the owner or operator of each facility currently in operation must either:

(1) Submit one copy of their Facility Security Plan (FSP) for review and approval to the cognizant COTP and a letter certifying that the FSP meets applicable requirements of this part; or

(2) If intending to operate under an Approved Security Program, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(b) Owners or operators of facilities not in service on or before December 31, 2003, must comply with the requirements in paragraph (a) of this section 60 days prior to beginning operations or by December 31, 2003, whichever is later.

(c) * * *

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

* * * * *

■ 25. In § 105.415—

■ a. In paragraph (a)(1), remove the word ''FSP'' and add, in its place, the words ''Facility Security Plan (FSP)'';

■ b. In paragraph (a)(2), remove the words ''§ 105.415 of this subpart'' and add, in their place, the words ''§ 105.410 of this subpart'';

■ c. Redesignate paragraph (a)(3) as (a)(4);

■ d. Add new paragraph (a)(3) to read as set out below;

■ e. In newly redesignated paragraph (a)(4), remove the words ''Facility Security Plan (FSP)'' and add, in their place, the word ''FSP'', and remove the words ''§ 105.415 if this subpart'' and add, in their place, the words ''§ 105.410 of this subpart''; and

■ f. In paragraph (b)(5), remove the words ''§ 105.415 of this subpart'' and add, in their place, the word ''§ 105.410 of this subpart'';

§ 105.415 Amendment and audit.

(a) * * *

(3) Nothing in this section should be construed as limiting the facility owner or operator from the timely implementation of such additional security measures not enumerated in the approved FSP as necessary to address exigent security situations. In such cases, the owner or operator must notify the cognizant COTP by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place.

* * * * *

■ 26. In Appendix A to Part 105, revise the first page to Form CG–6025 to read as follows:

BILLING CODE 4910–15–U

Appendix A to Part 105—Facility Vulnerability and Security Measures Summary (Form CG–6025)

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-6025 (05/03)	**FACILITY VULNERABILITY AND SECURITY MEASURES SUMMARY**	OMB APPROVAL NO. 1625-0077

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. The Coast Guard estimates that the average burden for this report is 60 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MP), U.S. Coast Guard, 2100 2nd St, SW, Washington D.C. 20593-0001 or Office of Management and Budget, Paperwork Reduction Project (1625-0077), Washington, DC 20503.

FACILITY IDENTIFICATION

1. Name of Facility

2. Address of Facility

3. Latitude

4. Longitude

5. Captain of the Port Zone

6. Type of Operation (check all that apply)

- ☐ Break Bulk
- ☐ Dry Bulk
- ☐ Container
- ☐ RO-RO
- ☐ Petroleum
- ☐ Chemical
- ☐ LHG/LNG
- ☐ Explosives and other dangerous cargo
- ☐ Certain Dangerous Cargo
- ☐ Barge Fleeting
- ☐ Offshore Support
- ☐ Passengers (Subchapter H)
- ☐ Passengers (Ferries)
- ☐ Passengers (Subchapter K)
- ☐ Military Supply
- ☐ If other, explain below:

VULNERABILITY AND SECURITY MEASURES

7a. Vulnerability	7b. Vulnerability Category ☐ If other, explain
8a. Selected Security Measures (MARSEC Level 1)	8b. Security Measures Category ☐ If other, explain
9a. Selected Security Measures (MARSEC Level 2)	9b. Security Measures Category ☐ If other, explain
10a. Selected Security Measures (MARSEC Level 3)	10b. Security Measures Category ☐ If other, explain

VULNERABILITY AND SECURITY MEASURES

7a. Vulnerability	7b. Vulnerability Category ☐ If other, explain
8a. Selected Security Measures (MARSEC Level 1)	8b. Security Measures Category ☐ If other, explain
9a. Selected Security Measures (MARSEC Level 2)	9b. Security Measures Category ☐ If other, explain
10a. Selected Security Measures (MARSEC Level 3)	10b. Security Measures Category ☐ If other, explain

[FR Doc. 03–26348 Filed 10–20–03; 8:45 am]
BILLING CODE 4910–15–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 106

[USCG–2003–14759]

RIN 1625–AA68

Outer Continental Shelf Facility Security

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, the temporary interim rule published on July 1, 2003, that provides security measures for mobile offshore drilling units (MODUs) not subject to the International Convention for the Safety of Life at Sea, 1974, and certain fixed and floating facilities on the Outer Continental Shelf (OCS) other than deepwater ports. This rule also requires the owners or operators of OCS facilities to designate security officers for OCS facilities, develop security plans based on security assessments and surveys, implement security measures specific to the OCS facility's operation, and comply with Maritime Security Levels. This rule is one in a series of final rules on maritime security in today's **Federal Register**. To best understand this rule, first read the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in today's **Federal Register**.

DATES: This final rule is effective November 21, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14759 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Lieutenant Greg Versaw (G–MPS–2), U.S. Coast Guard by telephone 202–267–4144 or by electronic mail *gversaw@comdt.uscg.mil.* If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled ''Outer Continental Shelf Facility Security'' in the **Federal Register** (68 FR 39338). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41916).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some of which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' that contained comments in that temporary interim rule, plus comments on the ''Outer Continental Shelf Facility Security'' temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same letter to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider comments received after the period for receipt of comments closed on July 31, 2003.

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the ''Discussion of Comments and Changes'' section of this preamble.

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. To view a copy of the complete regulatory text with the changes shown in this final rule, *see http://www.uscg.mil/hq/g-m/mp/index.htm.*

Background and Purpose

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the ''Background and Purpose'' section in the preamble to the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in this issue of the **Federal Register**.

Discussion of Comments and Changes

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. For example, discussions of comments that requested clarification or changes to the Declaration of Security procedures are duplicated in the preambles to parts 104, 105, and 106. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG–2003–14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

Subpart A—General

This subpart contains provisions concerning applicability, waivers, and other subjects of a general nature applicable to part 106.

Two commenters proposed language to clarify the definition of ''OCS facility'' to make clear that the term includes Mobile Offshore Drilling Units (MODUs) when attached to the subsoil or seabed for the exploration, development, or production of oil or natural gas. One commenter suggested that this additional language would ''provide clarification regarding the applicability of'' part 106.

The purpose of the broad definition of ''OCS facility'' in § 101.105 is to ensure that OCS facilities that are not regulated under part 106 will be covered by parts 101 through 103. The proposed additional language would not add clarity to part 106 because the applicability in § 106.105 states that the section applies only to those MODUs that are operating for the purposes of engaging in the exploration, development, or production of oil, natural gas, or mineral resources.

Two commenters suggested amending the definition of ''owner or operator'' so

that the definition includes, for OCS facilities: ''the lessee or the operator designated to act on behalf of the lessee in accordance with 30 CFR part 250.'' One commenter sought clarification of the terms ''owner or operator'' and suggested adding ''operational control is the ability to influence or control the physical or commercial activities pertaining to that facility for any period of time.''

We disagree with adding the suggested language of the first commenter because we have concluded that the person with operational control is the best person to implement these regulations and, therefore, should be responsible for implementation. The language proposed would include a lessee regardless of whether or not that lessee maintains such operational control. We also disagree with adding the suggested language of the second comment because it would be unnecessarily limiting.

Five commenters recommended changes to the definitions of ''facility'' and ''OCS facility'' in § 101.105 in order to clarify the applicability of parts 104, 105, and 106 to MODUs. Two commenters suggested adding language to the facility definition to specifically include MODUs that are not regulated under part 104, consistent with the definition of OCS facility. Another commenter stated that if we change the definition to include MODUs not regulated under part 104, then we also should add an explicit exemption for these MODUs from part 105. Three commenters suggested deleting the words ''fixed or floating'' and the words ''including MODUs not subject to part 104 of this subchapter'' in § 106.105 and adding a paragraph to read, ''the requirements of this part do not apply to a vessel subject to part 104 of this subchapter.''

With regard to the definition of ''facility'' and the suggested additional language regarding MODUs, the definition clearly incorporates MODUs that are not covered under part 104 and MODUs that are sufficiently covered under parts 101 through 103 and 106. Therefore, we are not amending our definition of facility nor incorporating the suggested explicit exemption from part 105 because these MODUs are excluded. We have, however, amended the applicability section of part 104 (§ 104.105) so that foreign flag, non-self propelled MODUs that meet the threshold characteristics set for OCS facilities are regulated by 33 CFR part 106, rather than 33 CFR part 104. We have done so because MODUs act and function more like OCS facilities, have limited interface activities with foreign and U.S. ports, and their personnel undergo a higher level of scrutiny to obtain visas to work on the Outer Continental Shelf. These amendments to § 104.105 required us to add a definition for ''cargo vessel'' in § 101.105. With these changes, we believe the existing definitions of ''facility'' and ''OCS facility'' in § 101.105 are sufficient to conclusively identify those entities that are subject to parts 104, 105, and 106. In addition, the definition of ''OCS facility,'' as written, ensures that these entities will be subject to relevant elements of an OCS Area Maritime Security (AMS) Plan. We believe the language in § 106.105, read in concert with the amended § 104.105(a)(1), and the existing definitions in part 101, is sufficient to preclude MODUs that are in compliance with part 104 from being subject to part 106.

We received four comments on the applicability of part 106 to certain OCS facilities. Three commenters stated that the operating conditions referenced in § 106.105 should remain as written. A fourth commenter stated that the size criteria used in § 106.105 contains no support; that the regulations are a duplication of existing informal security measures; that the regulations do not define ''adequate level of security'' and offer no support that scrutiny of personnel and cargo will, or has in the past, prevented terrorist attacks; that the rule imposes a huge paperwork and formal reporting burden; that training of employees to detect dangerous situations and devices on facilities located more than 100 miles from shore is unreasonable; that the security provided by the Declaration of Security is minimal; that there is no need for the OCS Facility Security Assessment; and that the OCS Facility Security Plan will offer no security from exterior threats.

As discussed in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39250), we determined the applicability of part 106 for those facilities that may be involved in a transportation security incident. In developing part 106 and the security measures in it, we deliberately reviewed and incorporated much of the pre-existing informal security measures to ensure standardization and minimize the burden to those in industry that have already voluntarily adopted standards. We have determined that the security measures in part 106 will reduce the likelihood of a transportation security incident by increasing the awareness of security threats to the OCS facility. We believe that the best means of deterring incidents is to reduce the vulnerabilities of the OCS facility to a security threat by ensuring that the owner or operator of that OCS facility increases their vigilance, awareness, and control over the vessels and persons that interact with the OCS facility. The OCS Facility Security Assessment and Plan are not envisioned to be the sole means of deterrence against security incidents. All of the security plans of the National Maritime Security Initiatives work in conjunction to reduce the vulnerability of the Marine Transportation System from various types of attacks originating from air, land, and sea. We recognize that we impose a requirement for the submission of assessments and plans to ensure compliance. To reduce the overall paperwork burden, we allow a single plan to cover multiple OCS facilities.

After further review of § 106.105 and discussion with the Minerals Management Service (MMS), we have determined that there may be OCS facilities acting as ''hubs'' for oil transportation that do not meet the production characteristics that are regulated under this part. However, due to unique local conditions, specific intelligence information, or other identifiable and articulable risk factors, these ''hub'' facilities may be involved in a transportation security incident. Therefore, on a case-by-case basis, these ''hub'' facility operations will be reviewed and, if appropriate, a MARSEC Directive will be issued to address these circumstances.

One commenter asked how OCS facilities not directly regulated under part 106 would be regulated.

As indicated in § 103.100, all facilities located in waters subject to the jurisdiction of the U.S. are covered by part 103 and must comply with the requirements in the AMS Plan, as developed by the AMS Committee.

Six commenters requested that the Coast Guard establish, without delay, an AMS Committee for the OCS portion of the Gulf of Mexico as an essential step in moving the various Federal law enforcement agencies and industry toward a mutual understanding of the response to a transportation security incident on the OCS.

We intend to cover the OCS facilities in the Gulf of Mexico by a single, District-wide AMS Plan. The establishment of an AMS Committee for the OCS facilities in the Gulf of Mexico was discussed at recent Gulf Safety Committee and National Offshore Safety Advisory Committee (NOSAC) meetings. We intend to form an AMS Committee for this area in the near future. Additionally, owners and operators of OCS facilities are encouraged to participate on the AMS

Committee of the COTP zone that is most relevant to their operations.

Twelve commenters questioned our compliance dates. One commenter stated that because the June 2004 compliance date might not be easily achieved, the Coast Guard should consider a ''phased in approach'' to implementation. Four commenters asked us to verify our compliance date expectations and asked if a facility can ''gain relief'' from these deadlines for good reasons.

The Maritime Transportation Security Act of 2002 (MTSA) requires full compliance with these regulations 1 year after the publication of the temporary interim rules, which were published on July 1, 2003. Therefore, a ''phased in approach'' will not be allowed. While compliance dates are mandatory, a vessel or facility owner or operator could ''gain relief'' from making physical improvements, such as installing equipment or fencing, by addressing the intended improvements in the Vessel or Facility Security Plan and explaining the equivalent security measures that will be put into place until improvements have been made.

We are amending the dates of compliance in § 106.110(a) and (b), § 106.115, and § 106.410(a) to align with the MTSA and the International Ship and Port Facility Security Code (ISPS Code) compliance dates.

One commenter requested that we clarify § 105.125, Noncompliance, to ''focus on only those areas of noncompliance that are the core building blocks of the facility security program'' stating that the section requires a ''self-report of every minor glitch in implementation.''

We did not intend for § 105.125 to not require self-reporting for minor deviations from these regulations if they are corrected immediately. We have clarified §§ 104.125, 105.125, and 106.120 to make it clear that owners or operators are required to request permission from the Coast Guard to continue operations when temporarily unable to comply with the regulations.

Two commenters stated that in its control and compliance measures, the Coast Guard should clarify its legal authority to establish a security zone beyond its territorial sea.

One basis for the Coast Guard to establish security zones in the Exclusive Economic Zone (EEZ) is pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.* For example, consistent with customary international law, 33 U.S.C. 1226 provides the Coast Guard with authority to carry out or require measures, including the establishment of safety and security zones, to prevent or respond to an act of terrorism against a vessel or public or commercial structure that is located within the marine environment. 33 U.S.C. 1222 defines ''marine environment'' broadly to include the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority. The United States asserts exclusive fishery management authority in the EEZ.

We received seven comments regarding waivers, equivalencies, and alternatives. Three commenters appreciated the flexibility of the Coast Guard in extending the opportunity to apply for a waiver or propose an equivalent security measure to satisfy a specific requirement. Four commenters requested detailed information regarding the factors the Coast Guard will focus on when evaluating applications for waivers, equivalencies, and alternatives.

The Coast Guard believes that equivalencies and waivers provide flexibility for vessel and facility owners and operators with unique operations. Sections 104.130, 105.130, and 106.125 state that vessel or facility owners or operators requesting waivers for any requirement of part 104, 105, or 106 must include justification for why the specific requirement is unnecessary for that particular owner's or operator's vessel or facility or its operating conditions. Section 101.120 addresses Alternative Security Programs and § 101.130 provides for equivalencies to security measures. We intend to issue guidance that will provide more detailed information about the application procedures and requirements for waivers, equivalencies, and the Alternative Security Program.

After further review of parts 101 and 104 through 106, we have amended §§ 101.120(b)(3), 104.120(a)(3), 105.120(c), and 106.115(c) to clarify that a vessel or facility that is participating in the Alternative Security Program must complete a vessel or facility specific security assessment report in accordance with the Alternative Security Program, and it must be readily available.

Subpart B—Outer Continental Shelf (OCS) Facility Security Requirements

This subpart describes the responsibilities of the facility owner or operator and personnel relative to OCS facility security. It includes requirements for training, drills, recordkeeping, and Declarations of Security. It identifies specific security measures, such as those for access control, restricted areas, and monitoring.

Two commenters suggested that the Coast Guard should not regulate security measures but should establish security guidelines based on facility type, in essence creating a matrix with ''risk-levels'' and suggested measures for facility security.

We cannot establish only guidelines because the MTSA and the International Convention for Safety of Life at Sea, 1974 (SOLAS) require us to issue regulations. We have provided performance-based, rather than prescriptive, requirements in these regulations to give owners or operators flexibility in developing security plans tailored to vessels' or facilities' unique operations.

One commenter asked who would be ensuring the integrity of security training and exercise programs.

Since the events of September 11, 2001, the Coast Guard has developed a directorate responsible for port, vessel, and facility security. This directorate oversees implementation and enforcement of the regulations found in parts 101 through 106. Additionally, owners and operators of vessels and facilities will be responsible for recordkeeping regarding training, drills, and exercises, and the Coast Guard will review these records during periodic inspections.

Five commenters supported the Coast Guard in not specifically defining training methods. Another commenter agrees with the Coast Guard's position that the owner or operator may certify that the personnel with security responsibilities are capable of performing the required functions based upon the competencies listed in the regulations. Two commenters stated that formal security training for Facility Security Officers and personnel with security related duties become mandatory as soon as possible. One commenter stated that they were concerned with the lack of formal training for Facility Security Officers.

As we explained in the temporary interim rule (68 FR 39263) (part 101), there are no approved courses for facility personnel and therefore, we intend to allow Facility Security Officers to certify that personnel holding a security position have received the training required to fulfill their security duties. Section 109 of the MTSA required the Secretary of Transportation to develop standards and curricula for the education, training, and certification of maritime security personnel, including Facility Security Officers. The Secretary delegated that authority to the Maritime

Administration (MARAD). MARAD has developed model training standards and curricula for maritime security personnel, including the Facility Security Officer. In addition, MARAD intends to develop course approval and certification requirements in the near future.

In the final rule for ''Vessel Security'' published elsewhere in today's **Federal Register** we made amendments to the responsibilities of the Company Security Officer. In this final rule, we are making conforming amendments to § 106.205(a)(2) to clarify that the Company Security Officer may also perform the duties of a Facility Security Officer.

Nine commenters requested formal alternatives to Facility Security Officers, Company Security Officers, and Vessel Security Officers much like the requirements of the Oil Pollution Act of 1990, that allow for alternate qualified individuals.

Parts 104, 105, and 106 provide flexibility for a Company, Vessel, or Facility Security Officer to assign security duties to other vessel or facility personnel under §§ 104.210(a)(4), 104.215(a)(5), 105.205(a)(3), and 106.210(a)(3). An owner or operator is also allowed to designate more than one Company, Vessel, or Facility Security Officer. Because Company, Vessel, or Facility Security Officer responsibilities are key to security implementation, vessel and facility owners and operators are encouraged to assign an alternate Company, Vessel, or Facility Security Officer to coordinate vessel or facility security in the absence of the primary Company, Vessel, or Facility Security Officer.

One commenter stated that allowing the Vessel Security Officer and Facility Security Officer to perform collateral non-security duties is not an adequate response to risk.

Security responsibilities for the Company, Vessel, and Facility Security Officers in parts 104, 105, and 106 may be assigned to a dedicated individual if the owners or operators believe that the responsibilities and duties are best served by a person with no other duties.

Forty-one commenters requested that §§ 104.225, 105.215, and 106.220 be either reworded or eliminated because the requirement to provide detailed security training to all contractors who work in a vessel or facility or to facility employees, even those with no security responsibilities such as a secretary or clerk, is impractical, if not impossible. The commenters stated that, unless a contractor has specific security duties, a contractor should only need to know how, when, and to whom to report anything unusual as well as how to react during an emergency. One commenter suggested adding a new section that listed specific training requirements for contractors and venders.

The requirements in §§ 104.225, 105.215, and 106.220 are meant to be basic security and emergency procedure training requirements for all personnel working in a vessel or facility. In most cases, the requirement is similar to the basic safety training given to visitors to ensure they do not enter areas that could be harmful. To reduce the burden of these general training requirements, we allowed vessel and facility owners and operators to recognize equivalent job experience in meeting this requirement. However, we believe contractors need basic security training as much as any other personnel working on the vessel or facility. Depending on the vessel or facility, providing basic security training (*e.g.*, how and when to report information, to whom to report unusual behaviors, how to react during a facility emergency) could be sufficient. To emphasize this, we have amended §§ 104.225, 105.215, and 106.220 to clarify that the owners or operators of vessels and facilities must determine what basic security training requirements are appropriate for their operations.

One commenter agreed with our inclusion of tabletop exercises as a cost-effective means of exercising the security plan.

Nine commenters stated that companies should be able to take credit toward fulfilling the drill and exercise requirements for actual incidents or threats, as under § 103.515.

We agree that, during an increased MARSEC Level, vessel and facility owners and operators may be able to take credit for implementing the higher security measures in their security plans. However, there are cases where a vessel or facility implementing a Vessel or Facility Security Plan may not attain the higher MARSEC Level or otherwise not be required to implement sufficient provisions of the plan to qualify as an exercise. Therefore, we have amended parts 104, 105, and 106 to allow an actual increase in MARSEC Level to be credited as a drill or an exercise if the increase in MARSEC Level meets certain parameters. In the case of OCS facilities, this type of credit must be approved by the Coast Guard in a manner similar to the provision found in § 103.515 for the AMS Plan requirements.

Two commenters recommended that a sentence be added to the end of § 105.225(b)(1) that reads: ''Short domain awareness and other orientation type training that may be given to contractor and other personnel temporarily at the facility and not involved in security functions need not be recorded.'' The commenters stated that this change would eliminate the unnecessary recordkeeping for this general ''domain awareness'' training.

We agree that the recordkeeping requirements in § 105.225 for training are broad and may capture training that, while necessary, does not need to be formally recorded. Therefore, we have amended the requirements in § 105.225(b)(1) to only record training held to meet § 105.210. We have also made corresponding changes to § 104.235(b)(1) and 106.230(b)(1).

We received 28 comments regarding communication of changes in the MARSEC Levels. Most commenters were concerned about the Coast Guard's capability to communicate timely changes in MARSEC Levels to facilities and vessels. Some stressed the importance of MARSEC Level information reaching each port area in the COTP's zone and the entire maritime industry. Some stated that local Broadcast Notice to Mariners and MARSEC Directives are flawed methods of communication and stated that the only acceptable means to communicate changes in MARSEC Levels, from a timing standpoint, are via email, phone, or fax as established by each COTP.

MARSEC Level changes are generally issued at the Commandant level and each Marine Safety Office (MSO) will be able to disseminate them to vessel and facility owners or operators, or their designees, by various means. Communication of MARSEC Levels will be done in the most expeditious means available, given the characteristics of the port and its operations. These means will be outlined in the AMS Plan and exercised to ensure vessel and facility owners and operators, or their designees, are able to quickly communicate with us and vice-versa. Because MARSEC Directives will not be as expeditiously communicated as other COTP Orders and are not meant to communicate changes in MARSEC Levels, we have amended § 101.300 to remove the reference to MARSEC Directives.

Two commenters requested that § 104.240(a) and (b)(1) be amended to specify that vessels must implement appropriate security measures before interfacing with facilities that are not located in a port. We agree that the vessel owner or operator, once notified of a change in MARSEC Level, must implement appropriate security measures before interfacing with a

facility that is not located in a port area. Facilities covered under part 105 will be within a port; facilities located on the Outer Continental Shelf, however, may not be included in a port. These OCS facilities should have similar security provisions to ensure their security. Therefore, we are amending § 104.240 to ensure that the vessel owner or operator is required to implement appropriate security measures in accordance with its Vessel Security Plan before interfacing with an OCS facility.

We received 14 comments about the length of the effective period of a continuing Declaration of Security for each MARSEC Level. Five commenters stated that there is little need to renew a Declaration of Security every 90 days and that it should instead be part of an annual review of the Vessel Security Plan. Three commenters stated that the effective period of MARSEC Level 1 should not exceed 180 days while the effective period for MARSEC Level 2 should not exceed 90 days. One commenter noted that a vessel may execute a continuing Declaration of Security and assumed that this means that a Declaration of Security for a regular operating public transit system that operates regularly is good for the duration of the service route. Three commenters recommended that the effective period for a Declaration of Security be either 90 days or the term for which a vessel's service to an OCS facility is contracted, whichever is greater. Two commenters recommended allowing ferry service operators and facility operators to enact pre-executed MARSEC Level 2 condition agreements rather than initiating a new Declaration of Security at every MARSEC Level change.

We disagree with these comments and believe that continuing Declaration of Security agreements between vessel and facility owners and operators should be periodically reviewed to respond to the frequent changes in operations, personnel, and other conditions. We believe that the Declaration of Security ensures essential security-related coordination and communication among vessels and facilities. Renewing a continuing Declaration of Security agreement requires only a brief interaction between vessel and facility owners and operators to review the essential elements of the agreement. Additionally, at a heightened MARSEC Level, that threat must be assessed and a new Declaration of Security completed. Less frequent review, such as during an annual or biannual review of the Vessel Security Plan, does not provide adequate oversight of the Declaration of Security agreement to ensure all parties are aware of their security responsibilities.

Five commenters requested that § 104.255(c) and (d) be amended so that a Declaration of Security need not be exchanged when conditions (*e.g.*, adverse weather) would preclude the exchange of the Declaration of Security.

We are not amending § 104.255(c) and (d) because as stated in § 104.205(b), if, in the professional judgment of the Master, a conflict between any safety and security requirements applicable to the vessel arises during its operations, the Master may give precedence to measures intended to maintain the safety of the vessel and take such temporary security measures as deemed best under all circumstances. Therefore, if the Declaration of Security between a vessel and facility could not be safely exchanged, the Master would not need to exchange the Declaration of Security before the interface. However, under § 104.205(b)(1), (b)(2), and (b)(3), the Master would have to inform the nearest COTP of the delay in exchanging the Declaration of Security, meet alternative security measures considered commensurate with the prevailing MARSEC Level, and ensure that the COTP was satisfied with the ultimate resolution. In reviewing this provision, we realized that a similar provision to balance safety and security was not included in parts 105 or 106. We have amended these parts to give the owners or operators of facilities the responsibility of resolving conflicts between safety and security.

Five commenters asked whether a company could have an agreement with a facility that outlines the responsibilities of all the company's vessels instead of a separate Declaration of Security for each vessel. The commenters stated that this would make the Declaration of Security more manageable for companies, vessels, and facilities that frequently interface with each other. One commenter raised a similar concern regarding barges and tugs conducting bunkering operations. One commenter suggested that Declarations of Security not be required when the vessels and ''their docking facilities'' share a common owner.

As stated in §§ 104.255(e), 105.245(e), and 106.250(e), at MARSEC Levels 1 and 2, owners or operators may establish continuing Declaration of Security procedures for vessels and facilities that frequently interface with each other. These sections do not preclude owners and operators from developing Declaration of Security procedures that could apply to vessels and facilities that frequently interface. However, as stated in §§ 104.255(c) and (d) and 106.250(d), at MARSEC Level 3, all vessels and facilities required to comply with parts 104, 105, and 106 must enact a Declaration of Security agreement each time they interface. We believe that, even when under common ownership, vessels and facilities must coordinate security measures at higher MARSEC Levels and therefore should execute Declarations of Security. For MARSEC Level 1, only cruise ships and vessels carrying Certain Dangerous Cargoes (CDC) in bulk, and facilities that receive them, even when under common ownership, are required to complete a Declaration of Security each time they interface.

Two commenters did not support the restriction on the Facility Security Officer being able to delegate authority to other security personnel in periods of MARSEC Levels 2 and 3. The commenters suggested that the Coast Guard use the same language in § 105.245(b), which allows the Facility Security Officer to delegate authority to a designated representative to sign and implement a Declaration of Security at MARSEC Levels 2 and 3.

Section 105.205 allows the Facility Security Officer to delegate security duties to other facility personnel. This delegation applies to the authority of the Facility Security Officer to sign and implement a Declaration of Security at MARSEC Levels 2 and 3. In order to clarify the regulations, however, we will amend § 105.245(d) to include the language found in § 105.245(b), allowing the Facility Security Officer to delegate this authority. We have also made the same change in § 106.250(d).

Eight commenters stated that there is significant confusion regarding the requirements to complete Declarations of Security, especially when dealing with unmanned barges. One commenter asked if a Declaration of Security is required when an unmanned barge is ''being dropped'' at a facility or when ''changing tows.''

We agree with the commenter and are amending §§ 104.255(c) and (d), and 106.250(d) to clarify that unmanned barges are not required to complete a Declaration of Security at any MARSEC Level. This aligns these requirements with those of § 105.245(d). At MARSEC Levels 2 and 3, a Declaration of Security must be completed whenever a manned vessel that must comply with this part is moored to a facility or for the duration of any vessel-to-vessel activity.

One commenter wanted to know who will become the arbiter in the event of a disagreement between a vessel and a facility, or between two vessels, in regards to the Declaration of Security.

We do not anticipate this will be a frequent problem. The regulations do not provide for or specify an arbiter in the event that an agreement cannot be reached for a Declaration of Security. It is important to note that failure to resolve any such disagreement prior to the vessel-to-facility interface may result in civil penalties or other sanctions.

Five commenters suggested that we add language to the requirements for security systems and equipment maintenance in §§ 105.250 and 106.255 to allow facility and OCS facility owners or operators to develop and follow other procedures which the owner or operator has found to be more appropriate through experience or other means.

The intent of the security systems and equipment maintenance requirement is to require the use of the manufacturer's approved procedures for maintenance. If owners or operators have found other methods to be more appropriate, they may apply for equivalents following the procedures in §§ 105.135 or 106.130.

Five commenters urged us to exempt OSVs and the facilities or OCS facilities they interact with from the Declaration of Security requirements because they do not pose a higher risk to persons, property, or the environment.

We disagree with the commenters, and we believe that the regulated vessels and the facilities that they interface with may be involved in a transportation security incident. In addition, Declarations of Security ensure essential security-related coordination and communication among vessels and facilities.

Two commenters asked us to amend § 106.250(f) to clarify that an expired Declaration of Security (§ 106.250(e)(2) or (e)(3)) must be replaced by a new Declaration of Security, in order for there to be a valid Declaration of Security.

Although we agree that an expired Declaration of Security must be replaced by a new Declaration of Security, in order for there to be a valid Declaration of Security, we believe that § 106.250 needs no further clarification. We do not preclude an OCS facility from executing a new Declaration of Security in accordance with § 106.250.

Seven commenters suggested that, instead of requiring disciplinary measures to discourage abuse of identification systems, the Coast Guard should merely require companies to develop policies and procedures that discourage abuse. One commenter opposed provisions of these rules relating to identification checks of passengers and workers. The commenter stated that these provisions threaten constitutional rights to privacy, travel, and association, and are too broad for their purpose. The commenter argued that identification methods are inaccurate or unproven and can be abused, and that the costs of requiring identification checks outweigh the proven benefit.

We recognize the seriousness of the commenters' concerns, but disagree that provisions for checking passenger and worker identification should be withdrawn. Identification checks, by themselves, may not ensure effective access control, but they can be critically important in attaining access control. Our rules implement the MTSA and the ISPS Code by requiring vessel and facility owners and operators to include access control measures in their security plans. However, instead of mandating uniform national measures, we leave owners and operators free to choose their own access control measures. In addition, our rules contain several provisions that work in favor of privacy. Identification systems must use disciplinary measures to discourage abuse. Owners and operators can take advantage of rules allowing for the use of alternatives, equivalents, and waivers. Passenger and ferry vessel owners or operators are specifically authorized to develop alternatives to passenger identification checks and screening. Signage requirements ensure that passengers and workers will have advance notice of their liability for screening or inspection. Vessel owners and operators are required to give particular consideration to the convenience, comfort, and personal privacy of vessel personnel. Taken as a whole, these rules strike the proper balance between implementing the MTSA's provisions for deterring transportation security incidents and preserving constitutional rights to privacy, travel, and association.

Four commenters asked for amendments to §§ 105.255(c)(2) and 106.260(c)(2) to include coordination with aircraft identification systems, when practicable, in addition to coordination with vessel identification systems as a required access control measure.

We agree with the commenters, and have amended §§ 105.255(c)(2) and 106.260(c)(2) to reflect this clarification. Most facilities, including OCS facilities, are accessible by multiple forms of transportation; therefore, coordination with identification systems used by those forms of transportation should enhance security.

One commenter asked if the Coast Guard would issue guidelines on screening.

The Coast Guard intends to coordinate with the Transportation Security Administration (TSA) and the Bureau of Customs and Border Protection (BCBP) in publishing guidance on screening to ensure that such guidance is consistent with intermodal policies and standards of TSA, and the standards and programs of BCBP for the screening of international passengers and cargo. Additionally, TSA is developing a list of items prohibited from being carried on board passenger vessels.

One commenter asked if there is a difference between the terms ''screening'' and ''inspection'' as used in § 104.265(e)(2), requiring conspicuously posted signs.

In 33 CFR subchapter H, the terms ''screening'' and ''inspection'' fully reflect the types of examinations that may be conducted under §§ 104.265, 105.255, and 106.260. Therefore, both terms are included to maximize clarity.

Eight commenters suggested that access control on board OCS facilities only be required when an unscheduled vessel is forced to discharge passengers for emergency reasons, and that the provisions of § 105.255 and § 106.260 be the responsibility of the shoreside facility and the vessel owner. The commenter stated that the need to duplicate the process at the facility is wasteful. The commenters asked for amendments to § 105.255 and § 106.260 in order to make clear that security controls should be established shoreside.

The Coast Guard believes that access control must be established to ensure that the people on board any vessel or facility are identified and permitted to be there. We recognize that access control and personal identification checks at both the shoreside and OCS facility could be duplicative, and did not intend to require this duplication, unless needed. Our regulations provide the flexibility to integrate shoreside screening into OCS facility security measures. We note, however, that the OCS facility owner or operator retains ultimate responsibility for ensuring that access control measures are implemented. This means that where integrated shoreside screening is implemented, the OCS facility owner or operator should have a means to verify that the shoreside screening is being done in accordance with the Facility Security Plan and these regulations. Even if integrated shoreside screening is arranged, the OCS Facility Security Plan must also contain access control provisions for vessels or other types of transportation conveyances that do not regularly call on the OCS facility or

might not use the designated shoreside screening process.

We are amending § 104.265(b) to include a verb in the sentence for clarity. We are also mirroring this clarification in §§ 105.255(b) and 106.260(b).

We are amending § 106.265(c) to clarify the requirement by removing an extraneous word.

Nine commenters were concerned about the designation of restricted areas. Six commenters requested that the Coast Guard clarify the wording in §§ 104.270(b) and 105.260(b) which states ''Restricted areas must include, as appropriate:'' because it is contradictory to impose a requirement with the word ''must,'' while offering the flexibility by stating ''as appropriate.'' One commenter stated that the provision that allows owners or operators to designate their entire facility as a restricted area could result in areas being designated as restricted without any legitimate security reason.

We believe that the current wording of §§ 104.270(b), 105.260(b), and 106.265(b) is acceptable. While the word ''must'' requires owners or operators to designate restricted areas, the word ''appropriate'' allows flexibility for owners or operators to restrict areas that are significant to their operations. The regulations provide for the entire facility to be designated as a restricted area, whereby a facility owner or operator would then be required to provide appropriate security measures to prevent unauthorized access into the entire facility.

We received ten comments questioning our use of the words ''continuous'' or ''continuously'' in the regulations. Four commenters requested that we amend language in § 104.245(b) by replacing the word ''continuous'' with the word ''continual,'' stating that ''continuous'' implies that there must be constant and uninterrupted communications. One commenter requested that we amend language in § 104.285(a)(1) by replacing the word ''continuously'' with the word ''continually,'' stating that ''continuously'' implies that there must be constant and uninterrupted application of the security measure. One commenter requested that we amend language in § 106.275 to replace the word ''continuously'' with the word ''frequently.'' One commenter recommended that instead of using the word ''continuously'' in § 105.275, the Coast Guard revise the definition of monitor to mean a ''systematic process for providing surveillance for a facility.'' One commenter stated that the continuous monitoring requirements in § 106.275 place a significant burden on the owners and operators of OCS facilities because increased staff levels would be necessary to keep watch not only in the facility, but also in the surrounding area.

We did not amend the language in §§ 104.245(b), 105.235(b), or 106.240(b) because the sections require that communications systems and procedures must allow for ''effective and continuous communications.'' This means that vessel owners or operators must always be able to communicate, not that they must always be communicating. Similarly, §§ 104.285, 105.275, and 106.275, as a general requirement, require vessel and facility owners or operators to have the capability to ''continuously monitor.'' This means that vessel and facility owners or operators must always be able to monitor. We have amended §§ 104.285(b)(4) and 106.275(b)(4) to use the word ''continuously'' instead of ''continually'' to be consistent with § 105.275(b)(1). This general requirement is further refined in §§ 104.285, 105.275, and 106.275, in that the Vessel and Facility Security Plans must detail the measures sufficient to meet the monitoring requirements at the three MARSEC Levels.

One commenter stated that the provision to mandate restricted areas on board OCS facilities should be removed from the rule, arguing that limiting access during an emergency should not be tolerated.

If the security assessment and plan for the OCS facility does not take into account access to restricted areas during an emergency situation, it may hinder effective response. Therefore, we have included several provisions to ensure that the security assessment and plan for the OCS facility address this issue, such as in §§ 106.205(d)(10), 106.280(b), and 106.305(c)(1)(vii).

One commenter suggested that this regulation contain provisions to allow vessels to continue fishing in or around OCS facilities. The commenter was concerned that any effort to prevent access to areas around these facilities would cause severe economic hardship to a large number of charterboat businesses.

The security regulations do not contain any provisions that specifically restrict fishing around OCS facilities. The OCS facility owner or operator may, however, restrict some areas as part of the facility's security measures. We do not believe that part 106 will cause a hardship for vessels that fish around OCS facilities because part 106 regulates only approximately 1 percent of all those facilities and because such restricted areas will likely be designated only during periods of heightened security.

Two commenters encouraged the formal training of Coast Guard Port State Control officers in enforcing these regulations to include the details of security systems and procedures, security equipment, and the elements of knowledge required of the Vessel Security Officer and Facility Security Officer.

The Coast Guard conducts comprehensive training of its personnel involved in ensuring the safety and security of facilities and commercial vessels. We continually update our curriculum to encompass new requirements, such as the Port State Control provisions of the ISPS Code. This training, however, is beyond the scope of this final rule.

Subpart C—Outer Continental Shelf (OCS) Facility Security Assessment (FSA)

This subpart describes the content and procedures for Facility Security Assessments.

We received 22 comments pertaining to sensitive security information and its disclosure. Twelve commenters requested that the Coast Guard delete the requirements that the Facility Security Assessment or Vessel Security Assessment be included in the submission of the Facility Security Plan or Vessel Security Plan respectively, stating that the security assessments are of such a sensitive nature that risk of disclosure is too great. Four commenters stated that the form CG–6025 ''Facility Vulnerability and Security Measures Summary'' should be sufficient for the needs of the Coast Guard and would promote facility security. Two commenters stated that there are too many ways for the general public to gain access to sensitive security information. One commenter stated that it was not clear how the Coast Guard would safeguard sensitive security information. One commenter stated that training for personnel in parts of the Facility Security Plan should not require access to the Facility Security Assessment.

Sections 104.405, 105.405, and 106.405 require that the security assessment report be submitted with the respective security plans. We believe that the security assessment report must be submitted as part of the security plan approval process because it is used to determine if the security plan adequately addresses the security requirements of the regulations. The information provided in form CG–6025 will be used to assist in the

development of AMS Plans. The security assessments are not required to be submitted. To clarify that the report, not the assessment, is what must be submitted with the Vessel or Facility Security Plan, we are amending § 104.305 to add the word ''report'' where appropriate. We have also amended §§ 105.305 and 106.305 for facilities and OCS facilities, respectively. Additionally we have amended these sections so that the Facility Security Assessment report requirements mirror the Vessel Security Assessment report requirements. All of these requirements were included in our original submission to OMB for ''Collection of Information'' approval, and there is no associated increase in burden in our collection of information summary. We also acknowledge that security assessments and security assessment reports have sensitive security information within them, and that they should be protected under §§ 104.400(c), 105.400(c), and 106.400(c). We are also amending §§ 104.305, 105.305, and 106.305 to clarify that all security assessments, security assessment reports, and security plans need to be protected from unauthorized disclosure. The Coast Guard has already instituted measures to protect sensitive security information, such as security assessment reports and security plans, from disclosure.

Ten commenters addressed the disclosure of security plan information. One commenter seemed to advocate making security plans public. One commenter was concerned that plans will be disclosed under the Freedom of Information Act (FOIA). One commenter requested that mariners and other employees whose normal working conditions are altered by a Vessel or Facility Security Plan be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because of past experience with State laws that require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter is particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of possible State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to sensitive security information portions of the security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is exempt from disclosure under FOIA. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

Information designated as sensitive security information is generally exempt under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public.

Two commenters stated that our regulations suggest that information designated as sensitive security information is exempt from FOIA. One commenter suggested that all documentation submitted under this rule be done pursuant to the Homeland Security Act of 2002, to afford a more legally definite protection against disclosure.

''Sensitive security information'' is a designation mandated by regulations promulgated by TSA and may be found in 49 CFR part 1520. These regulations state that information designated as sensitive security information may not be shared with the general public. FOIA exempts from its mandatory release provisions those items that other laws forbid from public release. Thus, security assessments, security assessment reports, and security plans, which should be designated as sensitive security information, are all exempt from release under FOIA.

Four commenters requested that the Company and the Facility Security Officers be given access to the ''vulnerability assessment'' done by the COTP to facilitate the development of the Facility Security Plan and ensure that the Facility Security Plan does not conflict with the AMS Plan.

The AMS Assessments directed by the Coast Guard are broader in scope than the required Facility Security Assessments. The AMS Assessment is used in the development of the AMS Plan, and it is a collaborative effort between Federal, State, Indian Tribal and local agencies as well as vessel and facility owners and other interested stakeholders. The AMS Assessments are sensitive security information. Access to these assessments, therefore, is limited under 49 CFR part 1520 to those persons with a legitimate need-to-know (*e.g.*, Facility Security Officers who need to align Facility Security Plans with the AMS Plan, may be deemed to have need to know sensitive security information). In addition, the potential conflicts between security plans and the AMS Plan will be identified during the Facility Security Plan approval process.

Six commenters suggested that a template for security assessments and plans be provided for affected entities. One commenter specifically asked for guidance templates for barge fleeting facilities.

We intend to develop guidelines for the development of security assessments and plans. Additionally, the regulations allow owners and operators of facilities and vessels to implement Alternative Security Programs. This would allow owners and operators to participate in a development process with other industry groups, associations, or organizations. We anticipate that one such Alternative Security Program will include a template for barge fleeting facilities.

One commenter asked for clarification of the terms ''self assessments,'' ''security assessments,'' ''risk/threat assessments,'' and ''on-scene surveys.''

Risk/threat assessments and self assessments are not specifically defined in the regulations, but refer to the general practices of assessing where a vessel or facility is at risk. The assessments required in parts 104 through 106 must take into account threats, consequences, and vulnerabilities; therefore, they are most appropriately titled ''security assessments.'' This title also aligns with the ISPS Code. To clarify that §§ 101.510 and 105.205 address security assessments required by subchapter H, we have amended these sections to change the term ''risk'' to the more accurate term ''security.'' ''On-scene surveys'' are explained in the security assessment requirements of parts 104, 105, and 106. As explained in § 104.305(b), for example, the purpose of an on-scene survey is to ''verify or

collect information'' required to compile background information and ''consists of an actual survey that examines and evaluates existing vessel protective measures, procedures, and operations.'' An on-scene survey is part of a security assessment.

One commenter stated that if a Facility Security Assessment determines a threat that is outside the scope of what is appropriate to include in the Facility Security Plan, the threat should be included as part of the AMS Plan.

We agree with the commenter. The AMS Plan is more general in nature and takes into account those threats that may affect the entire port, or a segment of the port. As such, the AMS Plan should be designed to take into account those threats that are larger in scope than those threats that should be considered for individual facilities. To focus the Facility Security Assessments on their port interface rather than the broader requirement, we have amended §§ 105.305(c)(2)(viii), (ix) and 106.305 (c)(2)(v) to reflect that the assessment of the facility should take into consideration the use of the facility as a transfer point for a weapon of mass destruction and the impact of a vessel blocking the entrance to or area surrounding a facility.

We received four comments regarding the use of third party companies to conduct security assessments. Two commenters asked if we will provide a list of acceptable assessment companies because of the concern that the vulnerability assessment could ''fall into the wrong hands.'' One commenter requested that the regulations define ''appropriate skills'' that a third party must have in order to aid in the development of security assessments. One commenter stated that the person or company conducting the assessment might not be reliable.

We will not be providing a list of acceptable assessment companies, nor will we define ''appropriate skills.'' It is the responsibility of the vessel or facility owner or operator to vet companies that assist them in their security assessments. In the temporary interim rule (68 FR 39254) (part 101), we stated, ''we reference ISPS Code, part B, paragraph 4.5, as a list of competencies all owners and operators should use to guide their decision on hiring a company to assist with meeting the regulations. We may provide further guidance on competencies for maritime security organizations, as necessary, but do not intend to list organizations, provide standards within the regulations, or certify organizations.'' We require security assessments to be protected from unauthorized disclosures and will enforce this requirement, including through the penalties provision under § 101.415.

After further review of subpart C of parts 104, 105, and 106, we are amending §§ 104.310, 105.310, and 106.310 to state that the security assessment must be reviewed and updated each time the security plan is revised and when the security plan is submitted for reapproval.

Two commenters asked for clarification regarding the reference to § 105.415, ''Amendment and audit,'' found in § 105.310(a).

We reviewed § 105.310(a) and have corrected the reference to read ''§ 105.410.'' We meant for the Facility Security Assessment report to be included with the Facility Security Plan when that plan is submitted to the Coast Guard for approval under § 105.410. We are also amending §§ 105.415 and 106.310 to make similar corrections to references.

Subpart D—Outer Continental Shelf (OCS) Facility Security Plan (FSP)

This subpart describes the content, format, and processing for Facility Security Plans.

One commenter recommended that the interval for audits of the OCS Facility Security Plan be changed to biennial to be consistent with the audit requirements for emergency response plans.

The annual audit certifies that the OCS Facility Security Plan continues to meet the applicable requirements of part 106. We believe that annual audits are necessary because the OCS Facility Security Plan, as a living document, should be continuously updated to incorporate changes or lessons learned from drills and exercises.

Three commenters recommended that this rule be amended to close ''the gap'' in the plan-approval process to address the period of time between December 29, 2003, and July 1, 2004. Another commenter suggested submitting the Facility Security Plan for review and approval for a new facility ''within six months of the facility owner or operator's intent of operating it.''

We agree that the regulations do not specify plan-submission lead time for vessels, facilities, and OCS facilities that come into operation after December 29, 2003, and before July 1, 2004. The owners or operators of such vessels, facilities, and OCS facilities are responsible for ensuring they have the necessary security plans submitted and approved by July 1, 2004, if they intend to operate. We have amended §§ 104.410, 105.410, and 106.410 to clarify the plan-submission requirements for the various dates before July 1, 2004, and after this date.

Thirty commenters commended the Coast Guard for providing an option for an Alternative Security Program as described in § 101.120(b) and urged the Coast Guard to approve these programs as soon as possible.

We believe the provisions in § 101.120(b) will provide greater flexibility and will help owners and operators meet the requirements of these rules. We will review Alternative Security Program submissions in a timely manner to determine if they comply with the security regulations for their particular segment. Additionally, we have amended §§ 104.410(a)(2), 105.115(a), 105.410(a)(2), 106.110(a), and 106.410(a)(2), to clarify the submission requirements for the Alternative Security Program.

After further review of the ''Submission and approval'' requirements in §§ 101.120, 104.410, 105.410, and 106.410, we have amended the requirements to clarify that security plan submissions can be returned for revision during the approval process.

We received 15 comments about the process of amending and updating the security plans. Five commenters requested that they be exempted from auditing whenever they make minimal changes to the security plans. Two commenters stated that it should not be necessary to conduct both an amendment review and a full audit of security plans upon a change in ownership or operational control. Three commenters requested a *de minimis* exemption to the requirement that security plans be audited whenever there are modifications to the vessel or facility. Seven commenters stated that the rule should be revised to allow the immediate implementation of security measures without having to propose an amendment to the security plans at least 30 days before the change is to become effective. The commenters stated that there is something ''conceptually wrong'' with an owner or operator having to submit proposed amendments to security plans for approval when the amendments are deemed necessary to protect vessels or facilities.

The regulations require that upon a change in ownership of a vessel or facility, the security plan must be audited and include the name and contact information of the new owner or operator. This will enable the Coast Guard to have the most current contact information. Auditing the security plan is required to ensure that any changes in personnel or operations made by the new owner or operator do not conflict with the approved security plan. The

regulations state that the security plan must be audited if there have been significant modifications to the vessel or facility, including, but not limited to, their physical structure, emergency response procedures, security measures, or operations. These all represent significant modifications. Therefore, we are not going to create an exception in the regulation. We recognize that the regulations requiring that proposed amendments to security plans be submitted for approval 30 days before implementation could be construed as an impediment to taking necessary security measures in a timely manner. The intent of this requirement is to ensure that amendments to the security plans are reviewed to ensure they are consistent with and supportable by the security assessments. It is not intended to be, nor should it be, interpreted as precluding the owner or operator from the timely implementation of additional security measures above and beyond those enumerated in the approved security plan to address exigent security situations. Accordingly we have amended §§ 104.415, 105.415, and 106.415 to add a clause that allows for the immediate implementation of additional security measures to address exigent security situations.

Additional Changes

During our review of this part, we noted that a section required a non-substantive editorial change, such as accurately completing a list. The section is § 106.275(a)(1). In addition, the part heading in this part has been amended to align with all the part headings within this subchapter.

Regulatory Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final assessment is available in the docket as indicated under **ADDRESSES.** A summary of the comments on the assessment, our responses, and a summary of the assessment follow.

One commenter suggested taking into greater account the risk factors of the facility and vessel as a whole, rather than simply relying on one factor, such as the capacity of a vessel as well as the cost-benefit of facility security to all of the business entities that make up a facility.

The Coast Guard considered an extensive list of risk factors when developing these regulations including, but not limited to, vessel and facility type, the nature of the commerce in which the entity is engaged, potential trade routes, accessibility of facilities, gross tonnage, and passenger capacity. Our Cost Assessments and Regulatory Flexibility Act Analyses for both the temporary interim rules and the final rules are available in the docket, and they account for companies as whole business entities, not individual vessels or facilities.

Cost Assessment

For the purposes of good business practice or pursuant to regulations promulgated by other Federal and State agencies, many companies already have spent a substantial amount of money and resources to upgrade and improve security. The costs shown in this assessment do not include security measures these companies have already taken to enhance security. Because the changes in this final rule do not affect the original cost estimates presented in the temporary interim rule (68 FR 39341) (part 106), the costs remain unchanged.

The Coast Guard realizes that every company engaged in maritime commerce will not implement this final rule exactly as presented in the assessment. Depending on each company's choices, some companies could spend much less than what is estimated herein while others could spend significantly more. In general, the Coast Guard assumes that each company will implement this final rule differently based on the types of OCS facilities it owns or operates and whether it engages in international or domestic trade.

This final rule will affect about 40 OCS facilities under U.S. jurisdiction, (current and future OCS facilities). These OCS facilities engage in exploring for, developing, or producing oil, natural gas, or mineral resources. To determine the number of OCS facilities, we used data that the Mineral Management Service (MMS) has identified as nationally critical OCS oil and gas infrastructure. These OCS facilities meet or exceed any of the following operational threshold characteristics:

(1) OCS facility hosts more than 150 persons for 12 hours or more in each 24-hour period continuously for 30 days or more;

(2) Production greater than 100,000 (one hundred thousand) barrels of oil per day; or

(3) Production greater than 200,000,000 (two hundred million) cubic feet of natural gas per day.

The estimated cost of complying with the final rule is present value $37 million (2003–2012, 7 percent discount rate). In the first year of compliance, the cost of security assessments and plans, training, personnel, and paperwork is an estimated $3 million (non-discounted). Following initial implementation, the annual cost of compliance is an estimated $5 million (non-discounted).

Approximately 80 percent of the initial cost of the final rule is for assigning and establishing Company Security Officers and Facility Security Officers, 12 percent is associated with paperwork creating Facility Security Assessments and Facility Security Plans, and 8 percent of the cost is associated with initial training (not including quarterly drills). Following the first year, approximately 58 percent of the cost is training (including quarterly drills), 42 percent is for Company Security Officers and Facility Security Officers, and less than 1 percent is associated with paperwork. Annual training (including quarterly drills) is the primary cost driver of OCS facility security.

We estimated approximately 3,200 burden hours for paperwork during the first year of compliance (40 hours for each Facility Security Assessment and each Facility Security Plan). We estimated approximately 160 burden hours annually following full implementation of the final rule to update Facility Security Assessments and Facility Security Plans.

We estimated the cost of this final rule to be minimal in comparison to vessel and non-OCS facility security implementation. This final rule includes only personnel, training, and paperwork costs for the affected OCS facility population. We assume the industry is adequately prepared with equipment suited to be used for security purposes (lights, radios, communications), therefore no security equipment installation, upgrades, or maintenance will be required for this final rule.

Benefit Assessment

This final rule is one of six final rules that implement national maritime security initiatives concerning General Provisions, Area Maritime Security, Vessels, Facilities, OCS Facilities, and AIS. The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime

entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to ''Applicability of National Maritime Security Initiatives'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a ''family'' of rules that will reinforce and support one another in their implementation. We have ensured, however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to ''Benefit Assessment'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39274) (part 101).

The Coast Guard determined annual risk points reduced for each of the final rules using the N–RAT. The benefits are apportioned among the Vessel, Facility, OCS Facility, AMS, and AIS requirements. As shown in Table 1, the implementation of OCS facility security for the affected population reduces 13,288 risk points annually through 2012. The benefits attributable for part 101, General Provisions, were not considered separately because it is an overarching section for all the parts.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Vessels	778,633	3,385	3,385	3,385	1,317
Facilities	2,025	469,686	.....	2,025	.....
OCS Facilities	41	.....	9,903	.....	.....
Port Areas	587	587	.....	129,792	105
Total	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented the cost effectiveness, or dollars per risk point reduced, in two ways: First, we compared the first-year cost and first-year benefit because first-year cost is the highest in our assessment as companies develop security plans and purchase equipment. Second, we compared the 10-year present value cost and the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES

Item	Final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS*
First-year cost (millions)	$218	$1,125	$3	$120	$30
First-year benefit	781,285	473,659	13,288	135,202	1,422
First-year cost effectiveness ($/risk point reduced)	279	2,375	205	890	21,224
10-Year present value cost (millions)	1,368	5,399	37	477	26
10-Year present value benefit	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year present value cost effectiveness ($/risk point reduced)	233	1,517	368	469	2,427

*Cost less monetized safety benefit.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard has reviewed this final rule for potential economic impacts on small entities. A Final Regulatory Flexibility Analysis discussing the impact of this final rule on small entities is available in the docket where indicated under **ADDRESSES.**

There are approximately 40 total current and future OCS facilities owned by five large companies that will be affected by this final rule. Depending on how the corporate headquarters' operation is classified and whether it is oil or gas specific, these companies are generally classified under the North American Industry Classification System (NAICS) code 211111 or 221210. According to the Small Business Administration guidelines for these industries, a company with less than 500 total corporate employees is considered a small entity. The entities affected by this final rule do not qualify as small entities because all of them have more than 500 employees.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be required to take in order to comply with each respective final rule. We have not created Compliance Guides for part 101 or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

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

Collection of Information

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The final rules are covered by two existing OMB-approved collections—1625–0100 [formerly 2115–0557] and 1625–0077 [formerly 2115–0622].

We received comments regarding collection of information; these comments are discussed within the ''Discussion of Comments and Changes'' section of this preamble. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

Federalism

Executive Order 13132 requires the Coast Guard to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, the Coast Guard may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications and a substantial direct effect on the States. This final rule requires those States that own or operate vessels or facilities that may be involved in a transportation security incident to conduct security assessments of their vessels and facilities and to develop security plans for their protection. These plans must contain measures that will be implemented at each of the three MARSEC Levels and must be reviewed and approved by the Coast Guard.

Additionally, the Coast Guard has reviewed the MTSA with a view to whether we may construe it as non-preemptive of State authority over the same subject matter. We have determined that it would be inconsistent with the federalism principles stated in the Executive Order to construe the MTSA as not preempting State regulations that conflict with the regulations in this final rule. This is because owners or operators of facilities and vessels-that are subject to the requirements for conducting security assessments, planning to secure their facilities and vessels against threats revealed by those assessments, and complying with the standards, both performance and specific construction, design, equipment, and operating requirements—must have one uniform, national standard that they must meet. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they moved from State to State. Therefore, we believe that the federalism principles enumerated by the Supreme Court in *U.S.* v. *Locke*, 529 U.S. 89 (2000) regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulation and control of vessels for security purposes. But, the same considerations apply to facilities, at least insofar as a State law or regulation applicable to the same subject for the purpose of protecting the security of the facility would conflict with a Federal regulation; in other words, it would either actually conflict or would frustrate an overriding Federal need for uniformity.

Finally, it is important to note that the regulations implemented by this final rule bear on national and international commerce where there is no constitutional presumption of concurrent State regulation. Many aspects of these regulations are based on the U.S. international treaty obligations regarding vessel and port facility security contained in SOLAS and the complementary ISPS Code. These international obligations reinforce the need for uniformity regarding maritime commerce.

Notwithstanding the foregoing preemption determinations and findings, the Coast Guard has consulted extensively with appropriate State officials, as well as private stakeholders during the development of this final rule. For these final rules, we met with the National Conference of State Legislatures (NCSL) Taskforce on Protecting Democracy on July 21, 2003, and presented briefings on the temporary interim rules to the NCSL's Transportation Committee on July 23, 2003. We also briefed several hundred State legislators at the American Legislative Exchange Council on August 1, 2003. We held a public meeting on July 23, 2003, with invitation letters to all State homeland security representatives. A few State representatives attended this meeting and submitted comments to a public docket prior to the close of the comment period. The State comments to the docket focused on a wide range of concerns including consistency with international requirements and the protection of sensitive security information.

Other concerns raised by the NCSL at the briefings mentioned above included questions on how the Coast Guard will enforce security standards on foreign flag vessels and how multinational crewmember credentials will be checked.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS

Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, Congress explicitly found that ''it is in the best interests of the U.S. to implement new international instruments that establish'' a maritime security system. We agree and will exercise Port State Control to ensure that foreign vessels have approved plans and have implemented adequate security standards on which these rules are based. If vessels do not meet our security requirements, the Coast Guard may prevent those vessels from entering the U.S. or take other necessary measures that may result in vessel delays or detentions. The Coast Guard will not hesitate to exercise this authority in appropriate cases. We discuss the ongoing initiatives of ILO and the requirements under the MTSA to develop seafarers' identification criteria in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39264) (part 101). We will continue to work with other agencies to coordinate seafarer access and credentialing issues. These final rules will also ensure that vessel and facility owners and operators take an active role in deterring unauthorized access.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This final rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)).

We did not receive comments regarding the Unfunded Mandates Reform Act.

Taking of Private Property

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

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this final rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive comments regarding the protection of children.

Indian Tribal Governments

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

Energy Effects

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

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security.

We did not receive comments regarding energy effects.

Environment

We have considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph (34)(a) and (34)(c), of Commandant Instruction M16475.lD, this final rule is categorically excluded from further environmental documentation. This final rule concerns security assessments, plans, training for personnel, and the establishment of security positions that will contribute to a higher level of marine safety and security for OCS facilities extracting oil or gas. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION.**

This final rule will not significantly impact the coastal zone. Further, the execution of this final rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

List of Subjects in 33 CFR Part 106

Facilities, Maritime security, Outer Continental Shelf, Reporting and recordkeeping requirements, Security measures.

■ Accordingly, the interim rule adding 33 CFR part 106, that was published at 68 FR 39338 on July 1, 2003, and amended at 68 FR 41916 on July 16, 2003, is adopted as a final rule with the following changes:

PART 106—MARITIME SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise the heading to part 106 to read as shown above.

■ 3. In § 106.110—

■ a. Revise paragraph (a) to read as set out below; and

■ b. In paragraph (b), remove the date ''June 25, 2004'' and add, in its place, the date ''July 1, 2004'':

§ 106.110 Compliance dates.

(a) On or before December 31, 2003, OCS facility owners or operators must submit to the cognizant District Commander for each OCS facility—

(1) The Facility Security Plan described in subpart D of this part for review and approval; or

(2) If intending to operate under an approved Alternative Security Program, a letter signed by the OCS facility owner or operator stating which approved

Alternative Security Program the owner or operator intends to use.

* * * * *

§ 106.115 [Amended]

■ 4. In § 106.115—

■ a. In the introductory text, remove the words ''that no later than'' and add, in their place, the word ''before''; and

■ b. In paragraph (c), after the words ''a copy of the Alternative Security Program the OCS facility is using'', add the words '', including a facility specific security assessment report generated under the Alternative Security Program, as specified in § 101.120(b)(3) of this subchapter,''.

■ 5. Revise § 106.120 to read as follows:

§ 106.120 Noncompliance.

When an OCS facility must temporarily deviate from the requirements of this part, the OCS facility owner or operator must notify the cognizant District Commander, and either suspend operations or request and receive permission from the District Commander to continue operating.

■ 6. In § 106.200—

■ a. In paragraph (b)(7), remove the word ''and'';

■ b. In paragraph (b)(8), remove the period and add, in its place, the words ''; and''; and

■ c. Add paragraph (b)(9) to read as follows:

§ 106.200 Owner or operator.

* * * * *

(b) * * *

(9) Ensure consistency between security requirements and safety requirements.

§ 106.205 [Amended]

■ 7. In § 106.205(a)(2), after the word ''organization'', add the words '', including the duties of a Facility Security Officer''.

§ 106.220 [Amended]

■ 8. In § 106.220, in the introductory paragraph, after the words ''of the following'', add the words '', as appropriate''.

■ 9. Revise § 106.225(a) to read as follows:

§ 106.225 Drill and exercise requirements.

(a) *General.* (1) Drills and exercises must test the proficiency of facility personnel in assigned security duties at all MARSEC Levels and the effective implementation of the Facility Security Plan (FSP). They must enable the Facility Security Officer (FSO) to identify any related security deficiencies that need to be addressed.

(2) A drill or exercise required by this section may be satisfied with the implementation of security measures required by the FSP as the result of an increase in the MARSEC Level, provided the FSO reports attainment to the cognizant District Commander.

* * * * *

§ 106.230 [Amended]

■ 10. In § 106.230(b)(1), remove the words ''each security training session'' and add, in their place, the words ''training under § 106.215''.

§ 106.250 [Amended]

■ 11. In § 106.250, in paragraph (d)—

■ a. After the words ''part 104'', add the words ''of this chapter, or their designated representatives,''; and

■ b. After the word ''DoSs'', add the words ''as required in paragraphs (b)(1) and (b)(2) of this section''.

§ 106.260 [Amended]

■ 12. In § 106.260—

■ a. In paragraph (b) introductory text, after the words ''ensure that'', add the words ''the following are specified'';

■ b. In paragraph (b)(3), remove the words ''are established''; and

■ c. In paragraph (c)(2), after the word ''vessels'', add the words ''or other transportation conveyances''.

§ 106.265 [Amended]

■ 13. In § 106.265(c), remove the words ''should include'' and add, in their place, the word ''includes''.

§ 106.275 [Amended]

■ 14. In § 106.275—

■ a. In paragraph (a)(1), after the word ''patrols'', remove the word ''and'' and add, in its place, a comma; and

■ b. In paragraph (b)(4), remove the word ''continually'' and add, in its place, the word ''continuously''.

■ 15. In § 106.305—

■ a. Revise paragraph (c)(2)(v) to read as set out below; and

■ b. Add paragraphs (d)(3), (d)(4), (d)(5), and (e) to read as follows:

§ 106.305 Facility Security Assessment (FSA) requirements.

* * * * *

(c) * * *

(2) * * *

(v) Effects of a nuclear, biological, radiological, explosive, or chemical attack to the OCS facility's shoreside support system;

* * * * *

(d) * * *

(3) The FSA report must list the persons, activities, services, and operations that are important to protect, in each of the following categories:

(i) OCS facility personnel;

(ii) Visitors, vendors, repair technicians, vessel personnel, etc.;

(iii) OCS facility stores;

(iv) Any security communication and surveillance systems; and

(v) Any other security systems, if any.

(4) The FSA report must account for any vulnerabilities in the following areas:

(i) Conflicts between safety and security measures;

(ii) Conflicts between personnel duties and security assignments;

(iii) The impact of watch-keeping duties and risk of fatigue on personnel alertness and performance;

(iv) Security training deficiencies; and

(v) Security equipment and systems, including communication systems.

(5) The FSA report must discuss and evaluate key OCS facility measures and operations, including—

(i) Ensuring performance of all security duties;

(ii) Controlling access to the OCS facility through the use of identification systems or otherwise;

(iii) Controlling the embarkation of OCS facility personnel and other persons and their effects (including personal effects and baggage, whether accompanied or unaccompanied);

(iv) Supervising the delivery of stores and industrial supplies;

(v) Monitoring restricted areas to ensure that only authorized persons have access;

(vi) Monitoring deck areas and areas surrounding the OCS facility; and

(vii) The ready availability of security communications, information, and equipment.

(e) The FSA, FSA report, and FSP must be protected from unauthorized access or disclosure.

■ 16. In § 106.310—

■ a. In paragraph (a), remove the words ''§ 106.405 of this part'' and add, in their place, the words ''§ 106.410 of this part''; and

■ b. Add paragraph (c) to read as follows:

§ 106.310 Submission requirements.

* * * * *

(c) The FSA must be reviewed and validated, and the FSA report must be updated each time the FSP is submitted for reapproval or revisions.

■ 17. In § 106.410, revise paragraph (a), introductory text, and paragraphs (a)(2), (b), and (c) to read as follows:

§ 106.410 Submission and approval.

(a) On or before December 31, 2003, the owner or operator of each OCS facility currently in operation must either:

* * * * *

(2) If intending to operate under an Approved Security Program, submit a

letter signed by the OCS facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use.

(b) Owners or operators of OCS facilities not in service on or before December 31, 2003, must comply with the requirements in paragraph (a) of this section 60 days prior to beginning operations or by December 31, 2003, whichever is later.

(c) The cognizant District Commander will examine each submission for compliance with this part and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

* * * * *

■ 18. In § 106.415, redesignate paragraph (a)(3) as paragraph (a)(4) and add new paragraph (a)(3) to read as follows:

§ 106.415 Amendment and audit.

(a) * * *

(3) Nothing in this section should be construed as limiting the OCS facility owner or operator from the timely implementation of such additional security measures not enumerated in the approved FSP as necessary to address exigent security situations. In such cases, the owner or operator must notify the cognizant District Commander by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place.

* * * * *

Dated: October 8, 2003.

Thomas H. Collins,

Admiral, Coast Guard, Commandant.

[FR Doc. 03–26349 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 26, 161, 164, and 165

[USCG–2003–14757]

RIN 1625–AA67

Automatic Identification System; Vessel Carriage Requirement

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, the temporary interim rule that amends port and waterway regulations and implements the Automatic Identification System (AIS) carriage requirements of the Maritime Transportation Security Act of 2002 (MTSA) and the International Maritime Organization requirements adopted under International Convention for the Safety of Life at Sea, 1974, (SOLAS) as amended.

This rule is one in a series of final rules published in today's **Federal Register**. To best understand this rule, first read the final rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792), published elsewhere in today's **Federal Register**.

DATES: This final rule is effective November 21, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14757 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

You may inspect the material incorporated by reference at room 1409, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–6277. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Mr. Jorge Arroyo, U.S. Coast Guard Office of Vessel Traffic Management (G–MWV), by telephone 202–267–6277, toll-free telephone 1–800–842–8740 ext. 7–6277, or electronic mail *jarroyo@comdt.uscg.mil.* If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled ''Automatic Identification System; Vessel Carriage Requirement'' in the **Federal Register** (68 FR 39353). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41913).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' that contained comments in that temporary interim rule, plus comments on the ''Automated Identification System; Carriage Requirement'' temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same comment to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider, in this Final Rule, comments received after the period for receipt of comments closed on July 31, 2003. Copies of late-received comments on AIS will be placed into the docket for the separate AIS Notice and request for comments that was published on July 1, 2003 (USCG 2003–14878; 68 FR 39369).

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the ''Discussion of Comments and Changes'' section of this preamble. A transcript of this meeting is available in the docket, where indicated under **ADDRESSES.**

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. We will place a copy of the unofficial complete regulatory text in

the docket, where indicated under **ADDRESSES.**

Public Meetings for Rulemakings Related to Vessel Traffic Service

The Coast Guard held a public meeting on October 28, 1998, in New Orleans, Louisiana. The meeting was announced in a notice published in the **Federal Register** on September 18, 1998 (63 FR 49939). This meeting gave the Coast Guard the opportunity to discuss the Vessel Traffic Service (VTS) concept on the Lower Mississippi River and the envisioned use of automatic identification system technology in the VTS. At this 1998 meeting, we reported the preliminary results of tests conducted on the Lower Mississippi River using precursor AIS. The proposed VTS on the Lower Mississippi River is not discussed in this rulemaking because it is the subject of a separate rulemaking titled ''Vessel Traffic Service Lower Mississippi River'' (65 FR 24616, April 26, 2000; docket [USCG–1998–4399]). We copied those comments regarding AIS that were submitted to the VTS Lower Mississippi River docket and placed those copies in the docket for this final rule for historical purposes. However, most of those comments were not addressed in the preamble discussion of the temporary interim rule because they were no longer applicable or because they addressed a previous version of AIS and not the version required by this final rule.

Over the past few years, the Coast Guard has made AIS presentations at various public forums including Federal advisory committee meetings (Towing Safety Advisory Committee, National Offshore Safety Advisory Committee, Houston-Galveston Navigation Safety Advisory Committee and Navigation Safety Advisory Council). Moreover, the AIS-based Ports and Waterways Safety System project being installed at the VTS Lower Mississippi River is regularly discussed at the Lower Mississippi River Waterway Safety Advisory Committee meetings.

The Houston-Galveston Navigation Safety Advisory Committee and Lower Mississippi River Waterway Safety Advisory Committee are federally chartered advisory committees charged with making recommendations to the Coast Guard on matters relating to the safe and efficient transit of vessels on their respective waterways. These open forums have afforded the public, particularly those in the Gulf of Mexico and Mississippi River areas, the opportunity to comment on both VTS Lower Mississippi River and AIS issues. The public's input was taken into account throughout this final rule.

Background and Purpose

Section 5004 of the Oil Pollution Act of 1990, as codified in 33 U.S.C. 2734, directed the Coast Guard to operate additional equipment, as necessary, to provide surveillance of tank vessels transiting Prince William Sound, Alaska. We have done so since 1994 through a system then known as ''Automated Dependent Surveillance.'' Advances have taken place with this technology, now referred to as AIS. Section 102 of the Maritime Transportation Security Act of 2002 (MTSA) mandates that AIS be installed and operating on most commercial and passenger vessels on all navigable waters of the United States.

The version of AIS required by this final rule automatically broadcasts vessel and voyage-related information that is received by other AIS-equipped ships and shore stations. In the ship-to-shore mode, AIS enhances maritime domain awareness and allows for the efficient exchange of vessel traffic information that previously was only available via voice communications with a VTS. In ship-to-ship mode, an AIS provides essential information to other vessels, such as name, position, course, and speed that is not otherwise readily available on board vessels. In either mode, an AIS enhances the mariner's situational awareness, makes possible the accurate exchange of navigational information, mitigates the risk of collision through reliable passing arrangements, and facilitates vessel traffic management, while simultaneously reducing voice radiotelephone transmissions.

AIS has achieved acceptance through worldwide adoption of performance and technical standards developed to ensure commonality, universality, and inter-operability. These recommendations have now been established and adopted as standards by the following diverse international bodies: The International Maritime Organization (IMO), the International Telecommunications Union (ITU), and the International Electrotechnical Commission (IEC). Further, installation of such equipment is required on vessels subject to the International Convention for the Safety of Life at Sea, 1974, (SOLAS), as amended.

The ''Automatic Identification System; Vessel Carriage Requirement'' temporary interim rule provides a comprehensive discussion on the applicability and compliance dates, AIS testing, the need for standardization, existing AIS-like systems, and the ports and waterways safety system. This information will not be duplicated in this final rule, but remains available at the **Federal Register** (68 FR 39353) and in the docket for this rule (USCG–2003–14757).

Discussion of Comments and Changes

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG–2003–14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

General

One commenter requested that we extend the compliance date for passenger and fishing vessels to December 31, 2005, to take advantage of prospective, potentially lower cost, AIS devices.

We believe the costs of AIS will continue to decrease as more manufacturers, models and types are brought to market. We also welcome all efforts of international standards bodies and manufacturers, to date, to design and produce cost-effective AIS equipment. As these improved or less costly devices are submitted for type approval, the Coast Guard will decide whether they meet our requirements and the intent of the MTSA, and if need be, we will amend this rule accordingly to permit their use.

Twenty-one commenters stated various reasons why they opposed a carriage requirement for AIS. Three commenters stated that AIS would not provide increased security to vessels or ports, arguing that knowing the location of larger, slower vessels does not eliminate any threat and that smaller, more agile recreational vessels are more accessible to terrorists. Seven commenters stated that AIS has very limited security benefits, is technically limited due to its line-of-sight range, and to the extent it does work, it works equally well for governmental authorities and those who choose to do harm. Four commenters stated that AIS installation will not provide vessel operators with information on the identity of other commercial craft that is

not already available through basic visual or radio means. Three commenters stated that VTS areas would not receive information on non-applicable vessels that could pose threats. Eight commenters stated that the estimated cost would be a burden that most companies would be unable to bear. One commenter stated that the installation would distract the captain's attention from surrounding non-commercial recreational traffic and will clutter the pilothouse. One commenter stated that AIS is an outdated technology.

We acknowledge these limitations; however, we believe that AIS has the potential to mitigate collisions and the risk of a transportation security incident, as defined in the MTSA. We recognize that a single sensor, such as AIS, will not likely prevent a transportation security incident alone, but if AIS can have a mitigating effect on just a single collision or transportation security incident, the security benefit could be significant. Furthermore, under the MTSA, the Coast Guard is required to implement AIS carriage.

One commenter stated that costs for annual repairs and for the replacement of the AIS unit need to be calculated.

The Regulatory Assessment and Initial Regulatory Flexibility Act Analysis, available in the docket for this rule (USCG–2003–14757), included detailed estimates for annual repairs and periodic replacement. The summary included in the temporary interim rule reflects these costs.

One commenter believes it is inappropriate to analyze the economic impact of the cost using the ''percentage of annual revenue that is first-year AIS cost,'' stating that it would be more appropriate to analyze the impact of the cost as a percentage of the net revenue of small businesses.

We recognize that using net revenues to determine the cost of this rule to small businesses would provide a more accurate picture of the effects of this rule on those entities, however this information is not available to the public. Thus, we used the information that is publicly available, the percentage of annual revenue, to analyze the economic impact of the cost of implementation on small businesses.

One commenter stated that our regulatory analysis is unclear as to whether the benefit assessment for AIS accounts for domestic vessels operating in VTS areas only, or applies to the entire inland waterway system.

In order to quantify the benefits of AIS implementation, the Coast Guard reviewed Marine Casualty Incident Reports from 1993–1999 that involved the vessel populations affected by the temporary interim rule. This included domestic vessels operating in VTS areas, not the entire inland waterway system.

One commenter agreed with our economic analysis regarding AIS and with our assessment that the cost of AIS installation for the domestic fleet far outweighs the benefit.

While monetized safety benefits produced a low benefit-cost ratio, Congress mandated an AIS carriage requirement that included domestic vessels in 46 U.S.C. 70114 of the MTSA. In addition, we believe that AIS is critical to maritime domain awareness and, although our assessment could not quantify or monetize the benefits of the security contribution of AIS, we believe it has the potential to mitigate the consequences of a transportation security incident as described in the MTSA.

Nine commenters noted that AIS is duplicative of existing systems because fishing vessels are currently equipped with Vessel Monitoring System (VMS), which already fulfills the AIS monitoring aspect. Two commenters requested that existing satellite tracking systems, such as the VMS used by the National Marine Fisheries Service (NMFS) be allowed as an alternative to the AIS requirement.

As discussed in the ''Existing AIS-Like Systems'' section of the preamble to the temporary interim rule, there are many precursor and competing tracking systems in use today, VMS is just one of them. VMS is a system required by the NMFS as a means to monitor and enforce compliance with NMFS requirements. VMS relies upon International Mobile Satellite Organization (INMARSAT C) communication service providers to schedule or poll, one-way, traffic reports from the vessel to NMFS. AIS, conversely, is an open, two-way, non-proprietary system that is autonomous and self-organizing, requiring no shoreside commands for its operations. AIS is also a short-range VHF–FM system that provides a vessel's location more frequently than VMS. This permits AIS to be both a safety and security tool. Furthermore, AIS is not limited to one-way communications or tied to proprietary software or communications services, and AIS signals can be monitored from shore and from other vessels to provide greater maritime domain awareness.

One commenter recommended that we rewrite the final rule in plain language so that vessel owners and operators can easily understand the carriage requirements and technical specifications.

We have attempted to make these final regulations as clear as possible. However, using plain language would require a complete rewrite of 33 CFR parts 26, 161, 164, and 165, which is beyond the scope of this rule.

Two commenters requested that the Coast Guard allow industry alternative programs as provided for in both facility and vessel security rules.

We are unable, at this time, to approve industry alternative programs for AIS. We do believe that it is a subject worthy of consideration, and welcome comments and suggestions on potential alternative programs for the AIS carriage requirement. We have published in the **Federal Register** (68 FR 55643) a notice reopening the comment period on our previously published notice titled ''Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters'' (USCG 2003–14878; July 1, 2003; 68 FR 39369). Please send your comments on the use of an alternative program to that docket.

One commenter stated that the AIS regulation represents an unfunded mandate, stating that further discussion of funding for AIS purchase and maintenance is needed because vessel owners should not be expected to fund this.

As stated in the temporary interim rule and below, this final rule is exempted from assessing the effects of the regulatory action as required by the Unfunded Mandate Reform Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)). We are aware of the burden this rule places on industry. In order to re-evaluate this burden, we have amended the applicability section for this final rule (discussed below), and will reopen the comment period on our previously published notice titled ''Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters'' (USCG 2003–14878; July 1, 2003; 68 FR 39369).

One commenter stated that vessels carrying AIS equipment should be released from liability whenever they are involved in a collision with a vessel that is not carrying AIS equipment.

While we appreciate the points raised concerning potential liability, the issue of liability is beyond the scope of this rule. No provision of the MTSA addresses liability, either to expressly limit liability or to address immunity from liability. Determinations of liability require a fact-laden inquiry on a case-by-case basis, and typically require complex analyses regarding matters such as choice of law, contracts,

and international conventions. Additionally, we note that carrying AIS does not relieve mariners from following all applicable navigation rules, and therefore may not be enough reason to relieve vessel owners and operators of liability.

Applicability

Five commenters supported our approach to AIS implementation. Three commenters expressed enthusiastic support for the AIS system, and agreed with the time schedule and criteria for SOLAS and domestic AIS carriage. Two commenters supported the decision to phase-in the requirements of the AIS regulation, and supported implementing the AIS requirements as a security measure, rather than as a safety tool.

One commenter asked whether U.S. government research ships are required to have AIS installed. If yes, the commenter asked what the time frame required for this installation is. Another commenter asked whether law enforcement and military vessels will carry AIS.

Sections 164.01(c) and 164.46(a)(1) were amended or added by the temporary interim rule (68 FR 39367) and state that the rules do not apply to government or non-commercial vessels. Therefore, these regulations do not apply to military, government, or public vessels so long as they are not used commercially. We do, however, encourage these vessels to voluntarily use AIS, as operational conditions may warrant, as will the Coast Guard fleet.

One commenter requested that the implementation date for AIS in the St. Mary's River Vessel Traffic Service (VTS) area be changed to January 31, 2005, from December 31, 2003, as published in the temporary interim rule, arguing that the December 31, 2003, implementation date is impractical based on vessel operations in the locks.

We agree that having the implementation deadline towards the end of a limited shipping season is impractical, but we do not agree with changing the date to January 31, 2005, because that date is beyond the deadline date established by the MTSA. In response, we have amended 33 CFR 164.46(a)(3) to apply uniformly to all VTS areas by December 31, 2004. We have made conforming amendments to §§ 164.43 and 165.1704 to reflect this change.

We received 47 comments requesting changes to the applicability of the AIS carriage requirement. Two commenters requested that passenger vessels be exempt from this rule. Two commenters asked why AIS is being required on vessels 65 feet and over. Four commenters disagreed in general with the applicability of the AIS rule. Two commenters asked the Coast Guard to suspend the AIS requirements for the domestic fleet. Two commenters asked that we exempt commercial marine assistance vessels that operate in a limited geographical area. One commenter requested that we exempt sailing vessels from the AIS requirement. One commenter suggested that we exempt charter boats. Eleven commenters requested that fishing vessels also be exempt from or be given a waiver from this rule, citing high costs and minimal benefits. Eight commenters urged the Coast Guard to amend the AIS carriage requirement to apply to passenger vessels carrying more than 150 passengers, not 50 passengers, stating that this would ease the regulatory burden for the most economically vulnerable companies, improve the cost-benefit ratio for the domestic fleet, and align with the applicability requirements in 33 CFR subchapter H. Ten commenters asked whether the requirements for AIS carriage apply if a vessel spends periods of reduced operations in a VTS area but conducts commercial operations only outside the VTS. One of these commenters further added that the AIS requirement could impose unintended consequences on VTS ports and shipyards because owners may now decide to moor their vessels to non-VTS areas.

Congress mandated an AIS carriage requirement on commercial vessels over 65-feet in length in 46 U.S.C. 70114, and provided explicit deadlines for AIS in the MTSA, § 102(e). Under the MTSA, the Coast Guard is granted discretion as to which passenger vessels should be required to have AIS. In crafting the temporary interim rule, the Coast Guard took into consideration that Vessel Bridge-to-Bridge Radiotelephone and Vessel Movement Reporting System (VMRS) requirements apply to passenger vessels over 100 gross tonnage and those certificated to carry 50 passengers, and that this population comprises a large segment of VTS users. We believe that AIS is a key component in providing safety and security in VTS and VMRS areas and should cover as many vessels as practicable, including smaller passenger vessels. Nevertheless, the Coast Guard is removing the AIS carriage requirement for commercial fishing vessels and small passenger vessels certificated to carry less than 151 passengers. The Coast Guard is amending § 164.46(a)(3) accordingly and will reengage the public with respect to applicability and carriage requirements for small passenger vessels and commercial fishing vessels.

To that end, the Coast Guard published in the **Federal Register** (68 FR 55643) a notice that reopened the comment period on our previously published notice titled ''Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters'' (USCG 2003–14878; July 1, 2003; 68 FR 39369). The notice reopening the comment period included additional questions regarding expanding AIS carriage to small passenger vessels, whether infrequent VTS users (*e.g.*, fishing vessels) should be exempt from the AIS requirement, and whether exemptions may be granted by the VTS as a deviation request, as opposed to the written notification required in 33 CFR 164.55. By this action, we hope to generate further comments, discussion, and contributions from prospective mandatory users of AIS that we will then consider as we continue forward with future AIS rulemakings.

Five commenters stated that the AIS carriage requirement should be universal, arguing that an AIS carriage requirement that does not apply to every vessel, including recreational vessels, is of limited value as either a security or a safety tool.

We agree that AIS would provide the greatest benefit if all vessels were required to be equipped with an AIS unit. However, as with any new technology, AIS carriage must be implemented prudently. Therefore, the Coast Guard has chosen to implement AIS domestically beginning in VTS areas (as denoted in table 161.12(c), and will consider expanding AIS carriage to other waterways in consideration of comments received on our previously published notice titled ''Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters'' (USCG 2003–14878; July 1, 2003; 68 FR 39369). Additionally, the AIS carriage requirements found in the MTSA do not apply to recreational vessels.

Upon further review, we have amended § 164.02 to clarify applicability for foreign vessels.

Technical

One commenter supported the AIS unit standardization proposal presented in the temporary interim rule.

One commenter asked if vessels that use an electronic chart to display AIS targets must have the chart updated and corrected to the latest Broadcast Notice to Mariners. The same commenter also asked if a vessel would still have to carry nautical charts if it uses an Electronic Chart Display and

Information System (ECDIS) to display AIS targets.

Mariners are advised that U.S. regulations or SOLAS requirements have always called for paper charts that are relied upon for the navigation of the vessel to be correct and up to date, regardless of whether they have AIS or can view vessels on an electronic chart.

One commenter expressed concerns over the electronic display of AIS data, stating that the technical limitations of commercial radar or ECDIS to merge data from the AIS is an issue.

We acknowledge the concerns expressed by the commenter. There are no international standards, at this time, for a manufacturer to rely upon to assure AIS buyers that an AIS may be properly integrated into other display devices. All AIS units come with a display that allows the user to input AIS information (*e.g.*, vessel identity, dimensions, navigation status, antenna location) and to access all information received from other units. AIS also has multiple output options that facilitate using or integrating AIS data on other navigational systems, such as radar, Advanced Radar Plotting Aid (ARPA), ECDIS, and electronic charts. We have purposely not required this integration, or chosen a one-size fits all approach to graphical displays, in order to leave the choice with the mariner, who is best positioned to decide which output option suits the mariner's vessel and operation. Additionally, we are working diligently on this matter, commissioning the Transportation Research Board to develop recommendations for us, and working with various standards bodies to develop guidelines and standards.

One commenter stated that the IMO guidelines on installation of AIS devices might not be well suited for smaller vessels.

We agree; the IMO Installation Guidelines (particularly regarding antenna placement) are not well suited for smaller vessels. We will develop further guidelines to assist these vessel owners and operators with the installation of their AIS, and will place a copy in the docket and post a copy on our website at *http://www.navcen.uscg.gov/enav/ais/AIS_carriage_reqmts.htm* as soon as we have completed these guidelines.

One commenter asked whether AIS would require a backup power source.

Given the importance and value of AIS data to possible search and rescue efforts, we have begun work with IMO to require back-up power requirements, similar to those imposed on Global Maritime Distress and Safety System (GMDSS) equipment. Should these requirements be adopted by IMO, we will propose regulatory amendments in a separate rulemaking to do the same for those vessels subject to SOLAS and strongly encourage the same on other vessels that transit the high seas.

Five commenters asked the Coast Guard to consider its ability to develop and support the public infrastructure necessary to fully support AIS and the availability of the radio-frequency bandwidth, citing the Coast Guard's recent history with similar projects (*e.g.*, GMDSS). Five commenters asked us to resolve questions involving frequency allocation, stating that vessel operators should not be required to keep track of different frequency requirements and manually adjust their AIS units for each VTS area. Three commenters stated that it is up to the Coast Guard, not the FCC, to ensure that frequencies are available for AIS use.

We have considered our ability to develop and support the public infrastructure necessary to fully support AIS. We have chosen to require carriage of AIS in those areas that are being upgraded through our Ports and Waterways Safety System acquisition program. The Coast Guard does not have the authority to designate frequencies for AIS use, therefore, we requested and received frequency authorizations from the Federal Communication Commission (FCC) and the National Telecommunication and Information Agency (NTIA). Pending a rulemaking by FCC, we rely on the FCC decision stated in FCC Notice DA–02–1362 that states that the Commission ''will consider the use of shipborne AIS equipment to be authorized by existing ship station licenses, including vessels that are licensed by rule.'' We agree that the operation of AIS should be seamless to the user, who should not be required to manually adjust their AIS units for each VTS area. FCC policies currently authorize the use of AIS frequencies (AIS1, Channel 87B, 161.975 MHz and AIS2, Channel 88B, 162.025 MHz) on existing ship station licenses. Should AIS frequency management be required due to the unavailability of AIS1 or AIS2 in any one VTS area, we intend to have the infrastructure in place to perform frequency management through the base station capabilities of AIS.

Five commenters stated that interference to adjacent channels would potentially result in the loss of property and life at sea.

AIS devices must fully comply with ITU and IEC standards and undergo an additional level of review not applicable to most other FCC type certified devices prior to being authorized to operate in the VHF marine band. Further, IMO has developed detailed guidelines (IMO SN/Circ. 227) to be followed regarding the installation of AIS. These guidelines have been incorporated by reference into this regulation, as a requirement, in 33 CFR 164.03 and 164.46. Notwithstanding this requirement, as is the case with any radiating or receiving radio device, there is always a possibility for radio interference when numerous emission devices are operating in the near vicinity of each other, particularly in a congested and noisy environment as exists on the VHF FM maritime band. The Coast Guard will be diligent in monitoring AIS use for interferences and will promptly mitigate them by enforcing the required installation guidelines, through the AIS type approval process, and through frequency plan coordination with existing public coast station licensees.

One commenter noted that the interference to adjacent channels from the currently adopted AIS carriage requirement is an unconstitutional taking of private property without just compensation.

The Coast Guard does not believe the MTSA or these regulations effect a taking, *inter alia,* because these regulations rely on FCC decisions to authorize existing shipboard licensees to operate AIS on the AIS frequencies. See FCC Public Notice DA–02–1622 (June 13, 2002). Additionally, we do not believe that the commenter's license constitutes a sufficient property interest to justify its position that this regulation constitutes a ''taking.'' Finally, even assuming, without admitting that there is a legally cognizable property interest in the commenter's license, this regulation does not create such an interference with the commenter's use of that license as to constitute a regulatory taking in violation of the Constitution.

One commenter asked whether a fleet manager could buy an AIS base station to assist with the company dispatch and logistics.

Shoreside AIS stations, mistakenly referred to by some as AIS base stations, are subject to FCC regulation and licensing. FCC Notice DA–02–1362 permits the use of AIS by ship station licenses but did not address its similar use by VHF shore stations. Shoreside AIS stations enhance the AIS network because they control matters regarding frequency management, power setting, and allocation of AIS data slots, which are all functions that will be performed by the Coast Guard or another government entity.

Three commenters stated that the utility of AIS is considerably diminished if the system, as installed, is not capable of relaying information from

an automatic position indicating system and gyrocompass.

We recognize that the information provided by external sensors, such as a transmitting heading device, speed log, or navigation lights, to an AIS in accordance with the standards incorporated by reference in this regulation will provide the additional benefit to the user, as would integrating AIS with the existing on board navigation equipment. However, this integration technology and its accompanying standards are still being developed, thus, we did not require them. Each U.S. type approved AIS has a timing and positioning component built-in (*e.g.*, Global Positioning System) and the lack of additional sensor input does not diminish the utility of the AIS in providing for security and navigational safety.

One commenter asked whether AIS is an electronic aid to navigation as that term is used in 33 CFR 66.01–1, which states: ''With the exception of radar beacons (racons) and shore-based radar stations, operation of electronic aids to navigation as private aids will not be authorized.''

AIS is a navigational aid, but not necessarily an aid to navigation, as that term is used in 33 CFR part 66. In addition to increasing maritime domain awareness for security purposes, shipborne AIS is intended for collision avoidance, and not intended to be relied upon or referred to, as a buoy, lighthouse, or racon would be. AIS standards allow for the creation of AIS aids to navigation, and should we choose to use these aids, they will be catalogued in the Coast Guard's Light List as all other aids to navigation currently are.

One commenter stated that the Coast Guard must resolve questions over patent rights for the AIS standard prior to implementing a domestic carriage requirement.

Prospective AIS users should not be concerned with any patent issues regarding AIS or any other shipboard equipment. These are matters that need only be worked out by manufacturers of the devices and any patent holders.

One commenter asked whether vessels would be required to provide a Maritime Mobile Service Identifier (MMSI) and Universal Time Coordinated (UTC), stating that not all vessels currently have an MMSI. This commenter also asked how a vessel operator can be confident that the target identified on an AIS is who it says it is, if AIS units can be purchased from any commercial source, and an MMSI obtained from an FCC agent.

One goal of AIS is to lessen the reporting required by mariners. However, certain information and data input is necessary for the proper operation of an AIS. Many of these data fields are inputted only once, such as the vessel's identity, MMSI, dimensions, and antenna location. MMSI and UTC are critical to AIS; the MMSI (defined in note 1 to Table 161.12(c) of 33 CFR 161.12), which we have amended for clarity, provides a unique identifier for each AIS user, and the UTC is relied upon by the system to properly manage the AIS data link and network. UTC is provided internally by the AIS unit, and requires no input by the user. MMSI does need to be entered by the user, and is noted on the ship's station radio license issued by the FCC. Because user error is always possible, we urge users to be vigilant and request that you notify the nearest COTP if you encounter improper AIS usage.

Operations

One commenter recommended rewording § 164.46(a) because as presently drafted it could be incorrectly interpreted to mean that manufacturer self-certification of equipment to the listed standards would be sufficient.

We agree and have amended § 164.46(a) to require ''type approved AIS.''

One commenter stated that AIS is unnecessary because collision avoidance is best accomplished with an alert watch that is monitoring VHF channels, radar, GPS chart plotters, and depth sounders. This commenter stated that these technologies are already found on fishing vessels and it is not apparent that the addition of AIS will result in any significant benefit over maintaining a good watch.

We agree that competent and attentive watchkeeping is paramount to prudent navigation. We further note that prudent mariners are required to use all means available to avoid a collision. AIS is the latest navigation system to assist watchkeepers in the performance of their duties. None of the existing technologies found on commercial fishing vessels can accurately identify other vessels to the extent that AIS can. Additionally, in our analysis of costs and benefits, we found examples of marine casualties involving commercial fishing vessels that could have been prevented or mitigated with the use of AIS. More details on these casualties can be found in the Regulatory Assessment and Initial Regulatory Flexibility Act Analysis located in the docket for this rule (USCG–2003–14757).

One commenter asked us several questions regarding whether use of an AIS would satisfy various ''Rules of the Road'' under the International Regulations for Preventing Collisions at Sea (COLREGS) or the Inland Navigation Rules (33 U.S.C. 2000 and 1201, *et seq.*), such as the requirement for a lookout, the provision regarding safe speed, provisions regarding risk of collision, and coordinating passing arrangements.

AIS is the latest of the available means a mariner will have to prevent collisions at sea. It is not intended to replace any of the existing means commonly and traditionally used by mariners to ascertain the risk of collision such as radar, Automatic Radar Plotting Aids (ARPA), lookouts, binoculars, visual bearings, relative position maneuvering boards, and EDCIS, but it can certainly supplement them. AIS provides mariners with near real-time information regarding another vessel's identity, dimensions, speed over ground, course over ground, navigation status, and heading. It will aid mariners in identifying other vessels in restricted visibility, and those that would be indistinguishable in radar sea clutter. It displays the bearing and range of other AIS-equipped vessels and provides another means of reliable communication by using ship-to-ship addressed text messages. In the future VTSs will be able to relay information on vessels not carrying AIS to AIS users. However, AIS should not be relied upon as the sole means to determine risk of collision, safe speed, or to avoid collision.

In the temporary interim rule, we discussed that AIS can assist mariners in coordinating passing arrangements. AIS will allow mariners to accurately identify a vessel by name and call sign to effectively make passing arrangements, thus replacing vague radio calls such as ''vessel off my port bow'' with more descriptive calls such as ''vessel NAME/Call sign, bearing XXX degrees and XX meters.'' While AIS allows for ship-to-ship text messaging to communicate with others and make passing arrangements, these private communications do not meet the requirements of the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 *et seq.*) for open broadcasts on the designated bridge-to-bridge channel, nor does it relieve a vessel operator from the requirement to sound whistle signals.

Three commenters asked the Coast Guard to test AIS on vessels on the Lower Mississippi River, stating that previous tests were not adequate.

We do not believe that additional testing on the Lower Mississippi River

is necessary prior to implementation. The Coast Guard conducted exhaustive testing of precursor AIS in cooperation with stakeholders on the Lower Mississippi River. We detailed this testing in the ''AIS Testing'' section of the preamble to the AIS temporary interim rule (68 FR 39357). We also conducted tests with the AIS being required in this regulation (ITU–R M.1371–1) in other VTS areas, and monitored similar tests conducted in other countries. However, the Coast Guard will continue to conduct system acceptance testing of the newly installed AIS shoreside network in the Lower Mississippi River.

Five commenters stated that AIS should require only minimal information from vessel operators, so that the information flow to and from AIS does not distract vessel operators from their other duties.

We agree that AIS users should not be burdened unnecessarily. One goal of AIS is to unburden mariners from the important, although tedious, tasks of reporting information to a VTS. Through AIS these reports are automated and additional voyage data may be transmitted. Whether vessels are required to supply this additional data (people on board, destination, and estimated time of arrival) will be determined by the VTS, which will take into consideration the reporting exemptions listed in 33 CFR 161.23.

One commenter asked whether the operator of a vessel entering a VMRS area must call the VTS on a VHF voice channel and whether the VTS will notify users of required actions by message or on VHF voice channels.

This rule mandates AIS position reports in lieu of VTS voice reports; however, it does not abolish the requirements set forth in 33 CFR part 161 regarding deviation requests, monitoring requirements, sailing plans, and final reports. Additionally, VTS and VTS users should still rely upon VHF voice communications on the designated VTS frequencies as the primary mode of VTS communication. VTS areas will eventually supplement these broadcasts with pertinent AIS text or binary messages.

One commenter asked whether a vessel could use AIS as a tool even if the vessel it is communicating with is not in sight, citing confusion with the COLREGS and Inland Navigation Rules Eleven to Eighteen.

Inland Navigation Rule Three clearly states that vessels are deemed to be in sight of one another only when one can be observed visually from the other, not when observed electronically (*e.g.*, AIS or radar). However, AIS-like radar—is still a useful tool to use when making navigational decisions prior to being in the sight of another vessel.

One commenter asked for clarification on the training requirements for an AIS operator.

At this time, we envision no additional training requirements other than reading the AIS owner's manual and being familiar with operation of the AIS. However, mariners seeking a greater understanding of AIS and its uses may wish to read a document developed by the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) titled ''IALA Guidelines on the Universal Automatic Identification System (AIS), Volume 1, Part 1—Operational Issues, Edition 1.1, December 2002,'' that is available at *http://www.iala-aism.org*.

One commenter asked how many vessels are displayed on an AIS when a vessel is in a crowded harbor.

AIS is designed to provide information on a minimum of the 20 closest active AIS targets.

Editorial

The temporary interim rule contained a typographical error, which is corrected in this rule. In §§ 164.03 and 164.46, the IMO circular ''Guidelines for Installation of Shipborne Automatic Identification System (AIS), dated January 6, 2003'' should have been titled ''SN/Circ.227'' vice ''SN/Circ.277.''

We have also added a note to 33 CFR 164.46(a) to clarify which international tonnage convention is being identified.

Procedural

Five commenters requested a longer comment period specifically for the AIS temporary interim rule.

We did not extend the comment period on this rule due to the need to follow the MTSA's statutory deadline for issuance of regulations. We acknowledge that these regulations are being implemented in a short period of time. We have, however, reopened the comment period on our previously published notice titled ''Automatic Identification System; Expansion of Carriage Requirements for U.S. Waters'' (USCG 2003–14878; July 1, 2003; 68 FR 39369).

Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in § 164.03.

Regulatory Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final assessment is available in the docket as indicated under **ADDRESSES.** A summary of the assessment and changes from the draft assessment follows.

Cost Assessment

This final rule is requiring the carriage of AIS on all U.S. flag SOLAS vessels, certain domestic vessels in VTS areas, and foreign flag vessels less than 300 gross tonnage that call on ports in the U.S. We estimate that 438 U.S. flag SOLAS vessels, 2,963 non-SOLAS domestic vessels, and 70 non-SOLAS foreign vessels will be affected by this final rule.

The estimated total present value cost of this final rule is $50.4 million (where the period of analysis is 2003–2012). An estimated present value $5.2 million is for the U.S. flag SOLAS fleet, $44.1 million is for the domestic, non-SOLAS fleet in VTS areas, and $1.1 million is for the foreign, non-SOLAS fleet that call on ports in the U.S.

In the first year of implementation, the estimated cost is $1.9 million for the U.S. flag SOLAS fleet, $27.6 million for the domestic, non-SOLAS fleet in VTS areas, and less than $1 million for the foreign, non-SOLAS fleet. Following initial implementation, the estimated annual cost is less than $1 million for the entire affected population.

Safety Benefits

The Coast Guard expects both quantifiable and non-quantifiable benefits as a result of the final rule. Quantified benefits include avoided property damage, injuries, fatalities, and pollution events as a result of having an AIS. Other benefits include better situational awareness, information, and communications. The final rule will also enhance Coast Guard missions such as marine safety and security, aids to navigation, and maritime mobility.

In order to quantify the benefits of AIS implementation, the Coast Guard reviewed Marine Casualty Incident Reports (MCIRs) from 1993–1999 that involved the vessel populations affected by this final rule. These incidents were

used to develop a historical rate of marine casualties in VTS areas to determine the effectiveness of AIS as a mitigating factor.

The estimated total present value benefit of the final rule is $24.4 million (2003–2012). An estimated present value $13.3 million is for the U.S. flag SOLAS fleet, $11.1 million is for the domestic, non-SOLAS fleet in VTS areas. We did not find any quantified safety benefits for the foreign, non-SOLAS fleet.

Security Benefits

This final rule is one of six final rules that implement national maritime security initiatives concerning general provisions, Area Maritime Security (ports), vessels, facilities, Outer Continental Shelf (OCS) facilities, and AIS. The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to ''Applicability of National Maritime Security Initiatives'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a ''family'' of rules that will reinforce and support one another in their implementation. We have ensured, however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to ''Benefit Assessment'' in the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (68 FR 39274) (part 101).

We determined annual risk points reduced for each of the six final rules using the N–RAT. The benefits are apportioned among the vessel, facility, OCS facility, area, and AIS rules. As shown in Table 1, the implementation of AIS for the affected population reduces 1,422 risk points annually through 2012. The benefits attributable for part 101, General Provisions, were not considered separately since this part is an overarching section for all the parts.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Vessels	778,633	3,385	3,385	3,385	1,317
Facilities	2,025	469,686	.....	2,025	.....
OCS Facilities	41	.....	9,903	.....	.....
Port Areas	587	587	.....	129,792	105
Total	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented cost effectiveness, or dollars per risk point reduced, in two ways: First, we compared the first-year cost and first-year benefit because first-year cost is the highest in our assessment as companies develop security plans and purchase equipment. Second, we compared the 10-year present value cost and the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES

Item	Final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS *
First-Year Cost (millions)	$218	$1,125	$3	$120	$30
First-Year Benefit	781,285	473,659	13,288	135,202	1,422
First-Year Cost Effectiveness ($/Risk Point Reduced)	279	2,375	205	890	21,224
10-Year Present Value Cost (millions)	1,368	5,399	37	477	26
10-Year Present Value Benefit	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year Present Value Cost Effectiveness ($/Risk Point Reduced)	233	1,517	368	469	2,427

* Cost less monetized safety benefit.

Although we have quantified these security benefits relative to AIS, the N–RAT is limited in its ability to measure benefits attributable to intelligence or information gathering. These limitations are discussed in the ''Assessment Limitations'' section in the preamble of the temporary interim rule titled ''Implementation of National Maritime Security Initiatives'' (USCG–2003–14792).

Congress mandated an AIS carriage requirement on domestic (non-SOLAS) vessels in 46 U.S.C. 70114, and provided an explicit phase-in schedule for AIS in section 102(e) of the MTSA. Strictly upon consideration of

monetized safety benefits, as measured through decreased collisions and the resulting decrease in injuries, mortalities, and pollution incidents, the cost of AIS installation for the domestic fleet far outweighs the benefit over a 10-year period (0.25 benefit-cost ratio). This ratio results from the high costs of purchasing and installing the unit (an estimated $9,330 per vessel), and the types of marine casualties that AIS is expected to mitigate, where damage is not usually severe nor is there significant loss of life. In view of the benefit-cost ratio presented above, the Coast Guard has shared with the Congress all significant information provided by the public that addresses the reasonableness of implementing the statute. A copy of this letter is available in the docket where indicated under **ADDRESSES**.

Because there is not yet a mass market for AIS, the cost per unit in the next few years, when the domestic fleet is required to purchase AIS, is likely to be higher than when it is replaced (around 2012). Because the AIS market is in its infancy, we cannot estimate how much the unit cost will decrease over the next decade. If many manufacturers enter the market, costs are likely to drop through competition. Because manufacturers have a potential world market and a significant U.S. market, many may attempt to capture a segment. Conversely, if only a few players emerge worldwide, AIS costs could remain high. Because manufacturers must engage in a rigorous approval process and cannot be assured that they will recoup research and development costs through unit sales, there is the potential that only a few dominant players will emerge in the AIS market. Because we cannot determine the trend of the AIS market and we did not want to understate the cost for AIS, we assumed that the cost for units in 2012 would again be approximately $9,000 per unit. It is possible that an AIS unit will not be this expensive to replace.

In terms of security, we estimated that we will not experience a significant benefit from a decrease in risk, as measured in risk points reduced in the N–RAT, as a result of AIS installation. There are two primary reasons for this estimate. First, the N–RAT was an internal Coast Guard tool that was modified to estimate the national benefits attributable to the suite of security rules mandated by the MTSA. The tool was not designed to measure the security benefits of AIS specifically. The N–RAT does not, therefore, robustly capture the risk mitigation potential of AIS. Second, the Coast Guard strongly believes that AIS is critical to maritime domain awareness. However, we are unable to quantify or monetize the benefits of this Coast Guard mission or the individual contribution of AIS to it.

While the monetized benefit of the rule does not exceed its cost, the Coast Guard believes that AIS has the potential to mitigate a transportation security incident. The Coast Guard recognizes that a single sensor, such as AIS, will not likely prevent a transportation security incident alone—but if AIS can have a mitigating effect on just a single incident, the security benefit could be significant. The Coast Guard must consider AIS in its suite of security rules and has developed a final rule that considers the mandates of the MTSA in light of the high initial costs of purchasing the unit by requiring AIS in VTS areas only for the domestic fleet. We are concentrating our efforts in VTS areas since this is where we can begin accruing the most benefit—for industry, the public, and the Coast Guard—in the shortest period of time. However in response to public comment, in § 164.46(a)(1) and (a)(2)(i), we have removed the carriage requirement of the temporary interim rule for commercial fishing vessels and some small passenger vessels. Through this final rule we are attempting to maximize the return on investment as quickly and as effectively as practical.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. We have reviewed this final rule for potential economic impacts on small entities. A Final Regulatory Flexibility Analysis discussing the impact of this rule on small entities is available in the docket where indicated under **ADDRESSES**.

Number and Types of Small Entities Affected

U.S. Flag SOLAS Vessels

Of the affected population, we estimated that of the 438 total U.S. flag SOLAS vessels, 205 are owned by 122 small businesses. The remaining 233 vessels are owned by approximately 40 large companies.

We estimated the cost of an AIS unit per vessel in the first year will be $9,330. Of this, $7,000 is for the AIS unit, $2,000 is for installation, and $330 is for mariner training. We estimated that following installation, each AIS will require $250 in annual maintenance to replace such items as the antenna, keyboard, and display screen. We estimated that the entire unit will be replaced after eight years.

We found that annual maintenance costs will have a less-than-1-percent impact on annual revenue for all small businesses with U.S. flag SOLAS vessels. First-year impacts to small businesses, therefore, are the focus of this analysis. To estimate the revenue impact on small businesses in the first year, the cost per vessel for AIS, $9,330, was multiplied by the number of vessels owned by each company, then divided by the average annual revenue for each company, as reported in the online databases. Of the 122 small businesses that own U.S. flag SOLAS vessels, we found revenue for 59 of them (48 percent). Table 3 presents the revenue impact for the 59 entities with known average annual revenue.

TABLE 3.—EFFECT OF FIRST-YEAR COST ON AVERAGE ANNUAL REVENUE FOR SMALL ENTITIES OWNING U.S. FLAG SOLAS VESSELS

Percent of annual revenue that is first-year AIS cost	Number of entities with known annual revenues	Percent of entities with known annual revenues
0–3	43	73
> 3–5	5	8
> 5–10	4	7
> 10–20	6	10
> 20–30	0	0
> 30	1	2
Total	59	100

As shown, the final rule will have a less-than-3-percent impact on 73 percent of small businesses owning non-SOLAS vessels in the first year it is in effect. Approximately 88 percent have a less-than-10-percent impact.

Number and Types of Small Entities Affected: Non-SOLAS Fleet in VTS Areas

We estimated that there are 637 small businesses that will be affected by the final rule that own non-SOLAS vessels that transit VTS areas. These 637 companies own 1,349 vessels, representing 46 percent of the 2,963 non-SOLAS vessels affected by the rule. An estimated 1,456 vessels (49 percent) are owned by 150 large businesses, and 55 vessels (2 percent) are owned by State and local governments. There are

103 vessels that transit VTS areas (3 percent of the non-SOLAS fleet) that have no company associated with the vessel due to missing company information in our data. We could not be certain if these vessels belong to small, large, or government entities and did not apportion these 103 vessels to one type of entity or another.

We estimated the cost of AIS per vessel in the first year will be $9,330. As with the U.S. flag SOLAS fleet, annual cost following installation of AIS will have little impact on annual revenues—a less-than-1 percent impact on annual revenue for most small businesses. The first-year cost of this final rule, therefore, will again have the greatest impact on average annual revenue. To estimate the revenue impact on small businesses in the first year, the cost per vessel for AIS, $9,330, was multiplied by the number of vessels owned by each company, then divided by the average annual revenue for each company. Of the 637 small businesses that own non-SOLAS vessels in VTS areas, we found revenue for 392 of them (62 percent). The results of the analysis for the non-SOLAS fleet in VTS areas with known company information are presented in Table 4.

TABLE 4.—EFFECT OF FIRST-YEAR COST ON AVERAGE ANNUAL REVENUE FOR SMALL ENTITIES OWNING DOMESTIC, NON-SOLAS VESSELS IN VTS AREAS

Percent of annual revenue that is first-year AIS cost	Number of entities with known annual revenues	Percent of entities with known annual revenues
0–3	303	77
> 3–5	32	8
> 5–10	28	7
> 10–20	15	4
> 20–30	10	3
> 30	4	1
Total	392	100

As shown, the final rule will have a less-than-3-percent impact on 77 percent of small businesses owning non-SOLAS vessels in the first year it is in effect. Approximately 92 percent have a less-than-10-percent impact. We concluded, therefore, that this final rule may have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be required to take in order to comply with each respective final rule. We have not created Compliance Guides for part 101 or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

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

Collection of Information

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The reports required by this rule are considered to be operational communications, transitory in nature, and, do not constitute a collection of information under the Paperwork Reduction Act.

We did not receive comments regarding collection of information.

Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. In addition, under the authority of Title I of the Ports and Waterways Safety Act, 33 U.S.C. 1221–1232 (specifically 33 U.S.C. 1223) and the MTSA this regulation will preempt any State action on the subject of Automatic Identification System carriage requirements. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000).) Our AIS carriage requirement rule falls into the category of equipping of vessels. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

We did not receive comments regarding Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any 1 year. We discuss the effects of this final rule elsewhere in this preamble. However, this final rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)).

We did receive one comment regarding the Unfunded Mandates Reform Act; this comment is discussed within the ''Discussion of Comments and Changes'' section of this preamble.

Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We did receive one comment regarding the taking of private property; this comment is discussed within the ''Discussion of Comments and Changes'' section of this preamble.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this final rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children. We did not receive comments regarding the protection of children.

Indian Tribal Governments

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

Energy Effects

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

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for enhanced maritime security, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security.

We did not receive comments regarding energy effects.

Environment

We have considered the environmental impact of this final rule and concluded that under figure 2–1, paragraphs (34)(d), (34)(e), and (34)(i) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule concerns vessel equipment requirements that will contribute to a higher level of marine safety and maritime domain awareness for U.S. port and waterways. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

This rulemaking will not significantly impact the coastal zone. Further, the rulemaking and the execution of this rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

We did not receive comments regarding the environment.

List of Subjects

33 CFR Part 26

Communications equipment, Marine safety, Radiotelephone, Vessels.

33 CFR Part 161

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

33 CFR Part 164

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

33 CFR Part 165

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

■ Accordingly, the interim rule amending 33 CFR parts 26, 161, 164, and 165 that was published at 68 FR 39353 on July 1, 2003, and amended at 68 FR 41913 on July 16, 2003, is adopted as a final rule with the following changes:

PART 161—VESSEL TRAFFIC MANAGEMENT

■ 1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70117; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 161.12 [Amended]

■ 2. In § 161.12, in note 1 following table 161.12(c), add the following sentence to the end of the note: ''The requirements set forth in §§ 161.21 and 164.46 of this subchapter apply in those areas denoted with a MMSI number.''

PART 164—NAVIGATION SAFETY REGULATIONS

■ 3. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703, 70114, 70117; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

■ 4. In § 164.02, revise paragraph (a) introductory text to read as follows:

§ 164.02 Applicability exception for foreign vessels.

(a) Except as provided in § 164.46(a)(2) of this part, including §§ 164.38 and 164.39, this part does not apply to vessels that:

* * * * *

§ 164.03 [Amended]

■ 5. In § 164.03(b), under ''International Maritime Organization'', remove the word ''SN/Circ.277'' and add, in its place, the word ''SN/Circ.227''.

§ 164.43 [Amended]

■ 6. In § 164.43, in paragraph (a) introductory text, remove the words ''July 1'' and add, in their place, the words ''December 31''.

■ 7. Revise § 164.46 to read as follows:

§ 164.46 Automatic Identification System (AIS).

(a) The following vessels must have a properly installed, operational, type approved AIS as of the date specified:

(1) Self-propelled vessels of 65 feet or more in length, other than passenger and fishing vessels, in commercial service and on an international voyage, not later than December 31, 2004.

(2) Notwithstanding paragraph (a)(1) of this section, the following, self-propelled vessels, that are on an international voyage must also comply with SOLAS, as amended, Chapter V, regulation 19.2.1.6, 19.2.4, and 19.2.3.5 or 19.2.5.1 as appropriate (Incorporated by reference, see § 164.03):

(i) Passenger vessels, of 150 gross tonnage or more, not later than July 1, 2003;

(ii) Tankers, regardless of tonnage, not later than the first safety survey for safety equipment on or after July 1, 2003;

(iii) Vessels, other than passenger vessels or tankers, of 50,000 gross tonnage or more, not later than July 1, 2004; and

(iv) Vessels, other than passenger vessels or tankers, of 300 gross tonnage or more but less than 50,000 gross tonnage, not later than the first safety survey for safety equipment on or after July 1, 2004, but no later than December 31, 2004.

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the following vessels, when navigating an area denoted in table 161.12(c) of § 161.12 of this chapter, not later than December 31, 2004:

(i) Self-propelled vessels of 65 feet or more in length, other than fishing vessels and passenger vessels certificated to carry less than 151 passengers-for-hire, in commercial service;

(ii) Towing vessels of 26 feet or more in length and more than 600 horsepower, in commercial service;

(iii) Passenger vessels certificated to carry more than 150 passengers-for-hire.

Note to § 164.46(a): ''Properly installed'' refers to an installation using the guidelines set forth in IMO SN/Circ.227 (incorporated by reference, see § 164.03). Not all AIS units are able to broadcast position, course, and speed without the input of an external positioning device (*e.g.* dGPS); the use of other external devices (*e.g.* transmitting heading device, gyro, rate of turn indicator) is highly recommended, however, not required except as stated in § 164.46(a)(2). ''Type approved'' refers to an approval by an IMO recognized Administration as to comply with IMO Resolution MSC.74(69), ITU–R Recommendation M.1371–1, and IEC 61993–2 (Incorporated by reference, see § 164.03). ''Length'' refers to ''registered length'' as defined in 46 CFR part 69. ''Gross tonnage'' refers to tonnage as defined under the International Convention on Tonnage Measurement of Ships, 1969.

(b) The requirements for Vessel Bridge-to-Bridge radiotelephones in §§ 26.04(a) and (c), 26.05, 26.06 and 26.07 of this chapter also apply to AIS. The term ''effective operating condition'' used in § 26.06 of this chapter includes accurate input and upkeep of AIS data fields.

(c) The use of a portable AIS is permissible only to the extent that electromagnetic interference does not affect the proper function of existing navigation and communication equipment on board and such that only one AIS unit may be in operation at any one time.

(d) The AIS Pilot Plug, on each vessel over 1,600 gross tons on an international voyage, must be available for pilot use, easily accessible from the primary conning position of the vessel, and near a 120 Volt, AC power, 3-prong receptacle.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.1704 [Amended]

■ 9. In § 165.1704(c)(6), remove the words ''July 1'' and add, in their place, the words ''December 31''.

Dated: October 8, 2003.

Thomas H. Collins,

Admiral, Coast Guard, Commandant.

[FR Doc. 03–26350 Filed 10–20–03; 8:45 am]

BILLING CODE 4910–15–U

Federal Register

Wednesday,
October 22, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 91, et al.
National Air Tour Safety Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, 119, 121, 135, 136

[Docket No. FAA–1998–4521; Notice No. 03–10]

RIN 2120–AF07

National Air Tour Safety Standards

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing national safety standards to govern commercial air tours (*i.e.*, sightseeing). These safety standards are proposed as a result of accidents and incidents involving air tour operators and subsequent National Transportation Safety Board recommendations. The proposed rule is intended to increase the safety of commercial air tours on a national basis by requiring certification of air tour operators and by establishing new safety requirements.

DATES: Send your comments on or before January 20, 2004.

ADDRESSES: Address your comments 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–1998–4521 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8166; e-mail: *Alberta.Brown@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 this proposed rulemaking. 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 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Before acting on this proposal, 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 this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, 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 to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits (4521) of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

I. Background

A. General Overview of Commercial Air Tours

Commercial sightseeing flights over areas of scenic or general interest to passengers have increased considerably since the 1970s. During the peak growth years, the air tour industry estimates that 2 million passengers flew annually on such flights. Sightseeing operations are conducted in all parts of the United States, over various types of scenic areas, including national parks, urban, coastal, and mountainous areas. The operators who conduct sightseeing flights as a regular part of their business are commonly known as air tour operators and their operations are often referred to as commercial air tours.

Air tour operators typically are single-pilot operations that are conducted in airplanes or helicopters. While some commercial air tours are conducted in hot air balloons and gliders, this proposed rule is intended to regulate commercial air tours conducted in powered aircraft only. Commercial air tours are conducted in visual meteorological conditions (VMC), normally without radar coverage or traffic advisories from an air traffic control facility.

Commercial air tours are often conducted in dense air traffic near popular scenic areas. These areas tend to be geographically limited in size. Air tour traffic typically is a mix of airplanes and helicopters, which have different flight characteristics (*e.g.*, speed and maneuverability). As a result of these factors, pilots conducting air tours must use heightened vigilance and greater precision in navigation.

Many popular scenic areas are located in remote, rugged terrain where the attraction is the natural beauty of the site. To view the natural beauty of popular sites, commercial air tours normally are conducted at relatively low altitudes, between 500 and 1,000 feet above ground level (AGL). Flights conducted at these altitudes are close to ground obstructions and often are horizontal to high terrain. In addition, many air tour operators conduct flights over water. Currently, commercial air tours that are conducted beyond 25 statute miles of the departure airport, or over a unit of the national park system, must be certificated under Title 14 CFR part 119 to operate in accordance with

either part 121 or 135. Part 121 and part 135 contain operational, safety and training rules that are not limited to air tour operations. Exceptions to the certification requirements are contained in 14 CFR 119.1(e). One of these exceptions, § 119.1(e)(2), applies to non-stop sightseeing flights conducted within 25 statute miles of the departure airport that takeoff and land at the same airport. Operators conducting flights under this exception are not required to be certificated under part 119 and are not subject to the operational requirements of either part 121 or 135. These excepted operations are subject only to the requirements of part 91.

This proposed rule would seek to improve the overall safety of commercial air tours by requiring all air tour operators, with a limited exception for certain charitable and community events, to be certificated under part 119. Additionally the proposed rule would increase the overall safety of commercial air tours by establishing requirements for low-level flight, visibility limits and over water flights. The proposed rule is modeled on Special Federal Aviation Regulation (SFAR) 71, which currently governs the commercial air tour industry operating in Hawaii. During the 6 years from 1989 through 1994, there were 18 air tour accidents in Hawaii, or an average of 3.46 accidents per 100,000 flight hours. The number of accidents peaked at 8 accidents in 1994. SFAR 71 was issued in September of 1994. There were 8 accidents in the 6 years from 1995 through 2000, dropping to an average of 1.48 accidents per 100,000 flight hours. The FAA believes that SFAR 71 has improved the overall safety of the commercial air tour industry in Hawaii and now seeks to use its experience with this SFAR to improve commercial air tour safety throughout the United States. If this rulemaking is adopted, the rule will replace the requirements of SFAR 71 in Hawaii and apply throughout the country.

B. Accident History

The commercial air tour industry experienced considerable growth from the 1970s through the mid-1990s. During that period of rapid growth, fatalities also increased. By improving the regulation of commercial air tours, the FAA hopes to reduce the number of fatalities and serious injuries.

Currently, with the exception of commercial air tours conducted under § 119.1(e)(2) (flights within 25 miles of the departing airport), all air tour operators must be certificated under 14 CFR part 119 to operate in accordance with part 121 or 135. This certification process enables the FAA to exercise greater oversight of certificated operators. In contrast, flights conducted under § 119.1(e)(2) are operated in accordance with the general aviation requirements of part 91; the operators do not have to be certificated under part 119 and, thus, do not have to operate in accordance with the requirements of part 121 or 135. The requirements of part 121 and 135 are stricter than those of part 91. Parts 121 and 135 contain requirements for aircraft equipment performance and maintenance, crewmember training, crewmember flight and duty time limitations and rest requirements, reporting and recordkeeping and flight locating.

As the commercial air tour industry has grown, the number of flights conducted under the § 119.1(e)(2) exception has increased, as has the number of accidents. Between 1993 and 2000 there were 75 accidents involving part 91 commercial air tours, resulting in 38 fatalities, and 53 accidents involving part 135 commercial air tours, resulting in 72 fatalities. The accidents listed below involving part 91 and 135 operators illustrate some of the safety issues raised by the National Transportation Safety Board (NTSB) that are addressed in this proposed rule. A few accidents outside of the 1993—2000 timeframe are listed because of the safety issues they show.

(1) On May 20, 1989, an Aerospatiale AS350D helicopter, which was touring Waialae Falls in Hawaii with six passengers on board, crashed. After hovering at a low altitude near the falls, the pilot began a pedal turn and forward movement for the initial climb away from the falls. The main rotor revolutions per minute (rpm) decayed, and the pilot turned back toward the upper falls, where he thought he could land. However, the helicopter settled into a ravine, damaging the helicopter and injuring the pilot and passengers. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the pilot's failure to maintain rotor rpm while turning and taking off from a hover with a relatively heavy gross weight. Additional factors related to the accident were the high-density altitude and rough/uneven (rocky) terrain in the emergency landing area.

(2) On June 11, 1989, a Beechcraft BE-H18, on a revenue air tour flight conducted under part 135, crashed in the Waipio Valley of the Kohala Mountains on the island of Hawaii. Its destination was Maui. The flight was conducted under visual flight rules (VFR). The pilot and 10 passengers were fatally injured, and the airplane was destroyed. The NTSB found that the pilot of the airplane flight entered an enclosed canyon and proceeded beyond a point from which a safe exit could be made.

(3) On April 22, 1992, a Beech Model E18S (BE–18) collided with a mountain on the island of Maui, Hawaii, while on a commercial air tour from Hilo to Honolulu, Hawaii. The flight was conducted under VFR as an on-demand charter flight. The pilot and all eight passengers sustained fatal injuries and the airplane was destroyed. The NTSB found that the primary cause of the accident was that the captain mistakenly deviated from his intended route because he did not use his navigation charts to confirm the correct heading. The mountain was obscured by mist, and the pilot did not see it until it was too late. While the pilot was certificated and medically qualified, he had falsified his employment history and did not possess the minimum hours of experience stipulated by the company to qualify as a pilot.

(4) On September 29, 1992, a U.S.-registered helicopter operating under part 91 on a commercial air tour collided in flight with a commercial Canadian air tour helicopter over Niagara Falls, Canada. The four occupants of the U.S. helicopter were fatally injured.

(5) On January 25, 1993, a Fairchild Hiller helicopter was destroyed during a commercial air tour conducted under part 91 at Volcanoes National Park, Hawaii. Before the accident, the pilot had been hovering near the shoreline, between 100 and 150 feet above sea level. When the pilot attempted to resume forward flight, he experienced a total left pedal failure. The pilot lost control and the helicopter landed in the ocean and sank. The helicopter was not equipped with floats and the pilot and four passengers were not wearing life preservers. Only the pilot survived. The NTSB found that the operator's failure to provide the passengers with life preservers was one factor contributing to their deaths.

(6) On July 14, 1994, two commercial air tour accidents occurred in the State of Hawaii. Both involved Aerospatiale AS350-series helicopters and forced landings in the water adjacent to the shore. The first accident occurred off the island of Kauai. The flight was proceeding parallel to the shoreline approximately 9 miles west of the community of Hanalei when a total loss of power occurred. The pilot performed an autorotation to the water approximately 150 feet from the shoreline, which was at the base of a cliff. All occupants exited the helicopter

uninjured but without wearing life preservers. Three of the occupants, including the pilot, drowned when they were unable to climb onto the rocks along the shoreline. The helicopter, which was not equipped with floats, sank and was recovered the following day. Life preservers were found aboard the helicopter, located in their containers beneath each seat. Surviving passengers said that they had not been briefed that life preservers were aboard. The NTSB determined that the probable causes of the accident and fatalities were ''. . . failure of the engine-driven fuel pump, which resulted in the loss of power, and the lack of aircraft flotation equipment.'' Related factors were ''. . . flight over water adjacent to terrain that afforded no suitable forced landing site, and lack of passenger briefing by the operator on the location and operation of life preservers.''

The second accident occurred off the island of Molokai. The flight had been scheduled to tour the island of Maui. However, after receiving information from other tour pilots that the weather conditions along the planned route were deteriorating, the pilot decided to take the passengers to Moloka'i. According to the pilot, the helicopter was in a hover approximately 50 feet above the water and 150 feet from the shoreline to allow passengers to view a large sea cave when the pilot sensed a slowing of the engine/rotor system. The helicopter was equipped with inflatable floats, which the pilot activated as the helicopter entered the water. In order to activate the floats the pilot had to remove his hand from the collective control. According to the NTSB, this action may have led to a hard impact. Of the seven occupants, the passenger who occupied the forward left seat received serious injuries due to water impact and the other six occupants were uninjured. After stabilizing on the surface, the occupants donned life preservers and swam to shore, where they spent the night before being rescued. The NTSB determined that the probable cause of the accident was '' * * * the pilot's failure to properly monitor power required versus power available to maintain rotor rpm, resulting in rotor rpm decay and a forced landing.'' Related factors were '' * * * the pilot's change of the tour route without notifying the company, which delayed rescue, and the location of the arm and fire switches for the flotation equipment, which required the pilot to remove his hand from the collective control to activate that equipment.''

(7) On July 3, 1997 an airplane lost power near Skagway, Alaska while on an air tour to view glaciers. The airplane ditched about 100′ from shore near small cliffs. There were five passengers in addition to the pilot. The passengers exited the airplane without life preservers into 39-degree water. The pilot threw one life preserver out and exited the airplane as it sank. The pilot and one passenger survived. The surviving passenger reported that her husband located the life preserver that was thrown. Her husband placed the life preserver over her head after they were both in the water. The passenger indicated she was not aware the preserver had an inflation cylinder. At one point the passenger noticed the mouth inflation tube on the life preserver when it bumped into her face. She attempted to blow air into the tube, and partially inflated the preserver. The surviving passenger did not recall any briefing about the location or use of the life preservers. Her husband, who was not wearing a life preserver, did not survive. No other life preservers were taken from the airplane. A nearby air tour helicopter arrived after the passengers were in the water and threw additional life preservers near the passengers. Two passengers drowned and two passengers were not found.

(8) On August 24, 1997, a Waco YMF (biplane) crashed into the ocean off the coast of Ocean City, Maryland. The pilot and 2 passengers, who had purchased the 15-minute sightseeing flight, received fatal injuries. According to the NTSB, visual meteorological conditions (VMC) prevailed and the pilot had not filed a flight plan for the part 91 flight. Numerous witnesses on the beach reported watching as the airplane maneuvered off shore. According to their accounts, the airplane was flying between 500 feet and 1,000 feet above the ocean. The witnesses stated that the airplane did two climbing turns, the first heading north, and the second heading south, with the flight path parallel to the shoreline. On a third climbing turn, heading north again, the airplane entered a tight spiral or spin at the top of the climb, and then the rotation stopped. The airplane had approximately a 45-degree, nose-down attitude when it impacted the water. After the wreckage was recovered, a preliminary inspection revealed no mechanical anomalies.

(9) On June 25, 1998, a Eurocopter AS–350–BA helicopter, operated by a Hawaiian air tour company crashed into rugged terrain in the Waialeale Canyon on the island of Kauai, Hawaii. The pilot and all five passengers received fatal injures, and the helicopter was destroyed. The flight departed from Lihue Airport. Approximately 42 minutes after departure, the pilot completed a position report. That report was the last known contact between the pilot and the tour operator. When the pilot failed to make further reports, a search was initiated. Searchers located the helicopter from the air, approximately 9 miles northwest of the Lihue Airport, where it struck steep terrain near the top of a ridge. Poor weather was reported in the area of the accident and some operators had cancelled flights on that day.

(10) On July 21, 2000, a commercial air tour helicopter collided with mountainous terrain in the Iao Valley on the island of Maui. The impact site was located on the north face of a 2,900-foot-high mountain, with a slope estimated in excess of 60 degrees. The recorded radar data indicated that at 1019:47 the helicopter was at 3,700 feet and on a northerly track. About 5 seconds later the helicopter commenced a course reversal. Between 1019:52 and 1019:56, the helicopter completed the turn and began flying along a southerly track. The helicopter's location was last recorded by radar at 1020:06. At this time it had descended to 3,100 feet. The accident site was found about ⅛-mile further south from this radar location. Three other helicopter pilots stated that they modified their tour routes to exclude the area flown by the accident pilot because of the inclement weather conditions they observed.

(11) On August 25, 2000, an airplane on an air tour ditched in the Pacific Ocean while attempting an emergency landing at Hilo International Airport, Hawaii. When the pilot determined that he could not reach the airport, he instructed the passengers to don their life preservers and briefed them to prepare for ditching. After the airplane landed in the water, all passengers except one were able to exit the airplane and were reached by rescue personnel within 15 minutes. One passenger was missing and was subsequently located in the airplane under 80 feet of water.

C. The NTSB Report and Recommendations

On June 1, 1995, the NTSB issued a special investigative report entitled, ''Safety of the Air Tour Industry in the United States'' (NTSB/SIR–95/01). The report is based on NTSB accident investigations and on information gained from two public hearings held during the week of October 19, 1994, in Phoenix, Arizona, and Honolulu, Hawaii. The Report explained the NTSB's concerns about the safety of the air tour industry in the United States. The Report focused on the adequacy of air tour regulations and the FAA's previous amendments to those

regulations, the use of emergency equipment, and the effectiveness of the FAA's oversight and certification of air tour operators.

As a result of the special investigation, the NTSB developed six safety recommendations it presented to the FAA. These recommendations are designed to prevent future accidents and to enhance the potential for occupant survival if an accident does occur. These recommendations are as follows:

Recommendation No. A–95–58. Develop and implement national standards by December 31, 1995, within 14 CFR part 135, or equivalent regulations, for all air tour operations with powered airplanes and rotorcraft to bring them under one set of standards with operations specifications and eliminate the exception currently contained in 14 CFR Part 135.1 (reiteration of exception for non-stop sightseeing flights within 25 miles of the airport).

Recommendation No. A–95–59. Require special conditions within the operations specifications established by A–95–58 for all air tour operators, similar to the special conditions contained in SFAR 50–2, SFAR 71, and FAA Handbook 8400.10 Bulletin 92–01, to accommodate localized airspace restrictions and other unique conditions for such operations.

Recommendation No. A–95–60. Develop and issue appropriate definitions for key terms such as ''air tour,'' ''air tour operator,'' and ''suitable landing area.''

Recommendation No. A–95–63. Require that all helicopters equipped with inflatable flotation systems have the activation switch for those systems located on one of the primary flight controls.

Recommendation No. A–99–57. Require all occupants of single-engine airplanes and single-engine helicopters operated for hire (air taxi and air tour) to wear life preservers when the aircraft is operating over water, whether float-equipped or not, unless it is operated at an altitude that allows it to reach a suitable landing area in the case of an engine failure.

Recommendation No. A–99–58. Require passenger briefings on ditching procedures and the use of required flotation equipment for all air taxi and air tour passenger flights that operate over water at an altitude that would not allow them to reach a suitable landing area, including those that operate less than 50 miles from the shoreline.

D. The FAA's Responses to the NTSB

The FAA's specific responses to the NTSB's recommendations are as follows:

NTSB Recommendation No. A–95–58 (Establish national standards for air tours). The FAA believes that this proposed rule would establish national standards for commercial air tours that would be supplemented by localized airspace restrictions. The FAA also proposes to eliminate the broad exception currently in § 119.1(e)(2). Those operators conducting non-stop operations for either a charitable or community event within 25 miles of an airport would be exempted from the certification requirements of part 119, although they would still be subject to the safety regulation at new part 136, subpart A.

NTSB Recommendation No. A–95–59 (Provide for localized airspace restrictions). The FAA already has adopted regulations pertaining to special areas that provide localized airspace restrictions and address issues specific to that locale and it anticipates that it would continue to do so as needed. Currently, commercial air tours operating in Hawaii are subject to SFAR 71. That SFAR will be replaced by this proposed rule, if the proposal is adopted. Commercial air tours operating in the Grand Canyon National Park (GCNP) currently are subject to the regulations in part 93, subpart U. All operators conducting commercial air tours at GCNP already are required to be certificated under part 119 to operate in accordance with either part 121 or 135. The proposed rule would supplement the existing GCNP regulations by providing basic safety requirements that would apply to all commercial air tours, unless a different site-specific requirement is established.

Additionally, commercial air tours operating over units of the national park or adjoining tribal lands are subject to the National Park Air Tour Management Act of 2000 (hereafter, Air Tour Act). Under the Air Tour Act, all commercial air tour operators are required to be certificated under part 119 and to operate under either part 121 or 135. There is a limited exception in that Act that allows commercial air tour operators to conduct commercial air tour operations under part 91 provided they have a letter of authority from the FAA and there are no more than five part 91 flights in a month conducted over a particular national park. The FAA, in cooperation with the National Park Service (NPS), will adopt air tour management plans for each national park over which ''commercial air tour operations'' are flown.

NTSB Recommendation No. A–95–60 (Adopt standard definitions to establish a uniform terminology). The FAA recognizes the need to standardize language governing commercial air tour regulation. The Air Tour Act adopted a definition of the term ''commercial air tour operation'' that is specific to flights over national parks. In contrast, part 93, subpart U contains a definition of the term ''commercial air tour'' that is not limited by area of flight. This proposed rule would adopt the definition of ''commercial air tour'' contained in part 93 since that definition can apply to all commercial air tours, regardless of locale. This NPRM also proposes standardized definitions for other terms.

NTSB Recommendation No. A–95–63 (Location of activation switch). The FAA proposes to require that the activation switch for the inflatable flotation systems for helicopters be located on one of the primary flight controls. In a helicopter, float activation switches that are not located on the primary controls require pilots to remove a hand from the flight controls during the ditching maneuver. The FAA believes that requiring the activation switch to be on a primary flight control would improve the pilot's ability to control the helicopter in an emergency situation.

NTSB Recommendation No. A–99–57 (Wearing life preservers). The FAA proposes to exceed the NTSB recommendation by requiring that all occupants of airplanes and helicopters operated as commercial air tours over water wear life preservers during the flight, for both single and multi-engine aircraft. The FAA believes that this will address the problems associated with donning life preservers in the limited time available to passengers from the onset of an emergency to a water landing. By wearing life preservers from the beginning of the flight, occupants would be prepared for water entry, in the event of an emergency. This is especially significant for occupants who are children, elderly, handicapped, non-English speaking, or those not familiar with aircraft operations.

NTSB Recommendation No. A99–58 (Passenger briefings). The FAA also proposes to require pre-flight passenger briefings on water ditching procedures, the use of required flotation equipment and procedures for exiting the aircraft in an emergency.

III. The Proposal

The FAA proposes to establish national commercial air tour safety regulations for all operators conducting

commercial air tours. The FAA is proposing a new subpart A in part 136 that would establish the general safety regulations particular to all commercial air tours, including those over the Grand Canyon, and those ''commercial air tour operations'' conducted over national parks. The FAA anticipates that part 136 would be dedicated to air tour regulation. Included in this part would be the regulations pertaining to Grand Canyon National Park and Rocky Mountain National Park, and the regulations implementing the National Parks Air Tour Management Act.

In proposing any such regulation, the FAA is required by Federal law to consider whether an exception is necessary for the state of Alaska. Specifically, § 1205 of the Federal Aviation Reauthorization Act of 1996, Pub. L. 104–264, states:

> In modifying regulations contained in title 14, Code of Federal Regulations, in a manner affecting intrastate aviation in Alaska, the Administrator of the Federal Aviation Administration shall consider the extent to which Alaska is not served by transportation modes other than aviation, and shall establish such regulatory distinctions as the Administrator considers appropriate. The FAA has considered this requirement and proposes to impose these regulations on all commercial air tours including those occurring in the State of Alaska. Alaska has a number of air tour operators that conduct commercial air tours over national parks, water, and rugged, remote terrain. Because of its remoteness, the terrain in Alaska is more difficult to reach and thus, persons may need to rely on their survival skills for a longer period of time prior to rescue. Passengers on Alaskan air tours would benefit from increased safety like passengers elsewhere. This rule would not negatively impact the ability of the average Alaskan to travel by air to remote villages since the proposed rule would only apply to passengers on commercial air tours.

FAA agrees with the NTSB that the same safety standard should be applied to all commercial air tours wherever they are conducted. The FAA believes that applying these proposed requirements to Alaskan commercial air tours would improve safety in Alaska and would establish the same standard for Alaska that is being applied to the rest of the country.

A. Applicability and Definitions Sections

The proposed amendments would create a new subpart A in part 136. This subpart would apply to any person operating or intending to operate a commercial air tour and, when applicable, to all occupants of an aircraft engaged in a commercial air tour. This would include persons conducting commercial air tours for charitable or community events, in accordance with the proposed certification exception at part 119.1(e)(11).

The terms ''sightseeing'' and ''sightseeing flights'' have been used for years in the FAA's regulations, but are now being replaced with the term ''commercial air tour.'' As previously noted above, the Air Tour Act specifically defines the term ''commercial air tour operation'' to apply only to sightseeing flights over units of the national park system, or adjoining tribal lands that meet specified conditions. The regulations pertaining to GCNP (14 CFR part 93, subpart U), contain a broad definition for ''commercial air tour''. The FAA proposes to adopt the definition of ''commercial air tour'' that is currently contained in Title 14 CFR section 93.303 (the definition section for subpart U) and incorporate it into subpart A of part 136. This would create a uniform definition for all commercial air tours, except those regulated by the Air Tour Act. Under the proposed rule, new definitions would be added for the terms ''air tour operator,'' ''raw terrain,'' ''suitable landing area,'' and ''shoreline''. The term ''commercial air tour operator'' is already a defined term under the Air Tour Act and is particular to flights over national parks. Thus, we must use another term to refer to these operators and to differentiate them from those operators regulated by the Air Tour Act. Consequently, the FAA is proposing to use the term ''air tour operator.''

B. The Exceptions

Section 119.1(e) contains the exceptions to the part 119 certification requirements. Currently, part 119 does not apply to the following operations, unless the aircraft has a passenger-seat configuration of 20 seats or more or a payload capacity of 6,000 pounds or more and common carriage is not involved: (1) Student instruction; (2) nonstop sightseeing flights with aircraft having a passenger seat configuration of 30 or fewer and a payload capacity of 7,500 pounds or less that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport; (3) ferry or training flights; (4) aerial work operations, including (i) crop dusting, seeding, spraying and bird chasing; (ii) banner towing; (iii) aerial photography or survey; (iv) firefighting; (v) helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and (vi) powerline or pipeline patrol; (5) sightseeing flights conducted in hot air balloons; (6) nonstop flights conducted within a 25 statute mile radius of the airport of takeoff for the purpose of parachute jumps; (7) certain helicopter operations; (8) operations conducted under part 133 of this chapter or 375 of this title; (9) emergency mail service under 49 U.S.C. 41906; or (10) flights carrying candidates in elections.

Under this proposed rule, § 119.1(e) would be amended to clarify certain exceptions and modify the exception for nonstop sightseeing flights conducted within 25 miles of the departing airport. Specifically, the student instruction exception at § 119.1(e)(1) would be amended to include flights for the purpose of introducing persons to flight. Introductory flights are intended to be part of flight instruction or to encourage new pilot certification.

Section 119.1(e)(2) would be removed 6 months from the date the final rule is published in the **Federal Register**.

Section 119.1(e)(3) would be amended to add to the current exception aircraft demonstration flights including aerobatic demonstration or training flights, air combat or formation training flights, and aircraft sales demonstration flights.

New § 119.1(e)(11), would apply only to nonstop passenger carrying flights in aircraft having a passenger seating configuration of 30 seats or fewer, excluding each crewmember seat, having a maximum payload capacity of 7500 pounds, that begin and end at the same airport. The flights would be required to be conducted within a 25 statute mile radius and part of a charitable or community event. Charitable and community events are infrequent functions that enable the general aviation community to contribute in a positive way to charitable and local causes. These flights are offered at local charitable or community events to raise funds for the sponsoring cause and to foster positive and productive working relations among the community, pilots, airport authorities, airport neighbors, and other members of the general public. When conducted by nonprofit organizations dedicated to promoting aviation safety, these events also assist in educating the general public about general aviation. Such events serve the public policy goals of allowing grass roots support of charitable and community fundraising efforts or of promoting aviation safety initiatives. In creating the proposed exceptions to the air carrier certification requirements for certain charitable and community events, the FAA has attempted to strike a careful balance between the recognition of the public benefits of such fundraising activities

and the need to set aviation safety standards.

In order to qualify for an exception to the air carrier certificate requirements of part 119, a charitable or community event must qualify as one of three types of events. The first exception is for an event conducted to raise funds for the benefit of a charity identified by the U.S. Department of Treasury. The second exception is for an event conducted to raise funds for the benefit of a nonprofit entity, organized under state or Federal law, with one of the entities' purposes being the promotion of aviation safety. The third exception is for an event conducted to raise funds for the benefit of a local community cause not covered in the first two paragraphs of the exception.

For the purposes of the charitable event exception, a charitable organization is identified as such by the U.S. Treasury. The FAA has tied this subparagraph to the U.S. Treasury because, through the Treasury's Internal Revenue Code, the federal government has already clarified which entities it believes serve a charitable public purpose and benefit the public good. The FAA's proposed exception recognizes the public policy interest in encouraging private fundraising activities for entities operating for a charitable purpose. However, to prevent such charitable fundraising events from operating as commercial aviation businesses themselves, the FAA proposes to limit this exception to four or fewer events per calendar year, with each event lasting no longer than 3 days in duration. If a large charitable organization has multiple offices or chapters, then each office or chapter is subject to the four or fewer limitation, rather than limiting the large organization (as a whole) to the four or fewer limitation. For example, if the American Red Cross in Los Angeles, California sponsors four events under the charitable exception in a calendar year, this would not preclude the Boise, Idaho chapter of the American Red Cross from sponsoring four such events of its own.

For the exception proposed for an event conducted to raise funds for the benefit of a nonprofit entity, organized under state or Federal law, it was important to require that one of the entities' purposes must be the promotion of aviation safety. The FAA proposes that a nonprofit entity would qualify for this exception if they promote aviation safety through the types of activities they sponsor or the publications they issue. The FAA believes that encouraging other organizations that promote aviation safety is consistent with its statutory mandate to promote and encourage aviation safety. As in the charitable event exception, the exception for nonprofit entities that promote aviation safety is limited to four or fewer events per calendar year, with each event lasting no longer than 3 days in duration. This limitation is intended to prevent nonprofit entities from operating as commercial aviation businesses themselves. As in the charitable event example, if one office or chapter of a large nonprofit entity that promotes aviation sponsors four fundraising events, this would not preclude another independent chapter of the same entity from conducting four of its own fundraising events under this exception.

The third exception proposed allows one event lasting 3 days or fewer in duration per calendar year, conducted to raise funds for the benefit of a local community cause not covered in the charitable or nonprofit entities exceptions set forth above. For several years, the FAA has issued exemptions to individual and/or sponsors seeking to conduct fundraising activities to benefit local causes, which have not been included in the first two exceptions set forth above. Specifically, members of a community may bond together to: raise funds to assist a member of the community who has suffered a tragic loss or needs medical care; raise funds for a common purpose; or get together for a cause that has not been incorporated in a formal charitable or nonprofit legal entity. It is this type of grass roots community support that the FAA proposes to continue to recognize as being in the public interest and being worthy of an exception to the air carrier certificate requirements. However, because such causes have not received a recognized legal status and do not otherwise fit within the other two exceptions, they will only be permitted to operate one event per year to prevent abuse of the exception and to ensure that such causes will not operate as a commercial aviation business.

The FAA is proposing additional restrictions on the exceptions for charitable and fundraising events. To ensure that the events are not merely profitable ventures for the pilots involved, the FAA is proposing to allow the pilot to retain or be reimbursed only for fuel and oil expenses, flight time and/or a charitable tax deduction.

To prevent air carriers from benefiting directly from such events, the FAA proposes language to clarify that the beneficiary of the funds raised must not be an entity in the business of transportation by air. This would not limit conducting an event to raise funds for a pilot, flight attendant, mechanic, or other person who works in aviation but has an independent need for fundraising as a member of the community. For example, a community event could be conducted to raise funds for a commercial pilot, who needed a bone marrow transplant.

To prevent pilots, sponsors and organizations from traveling around a state, region, or nation to conduct multiple commercial air tours throughout the year, the FAA proposes to limit the number of events conducted by any participant in the fundraiser. For the charitable organization and the nonprofit entity exceptions, each pilot, organization or sponsor must not exceed four events in any calendar year. For the third exception (community events), each pilot, organization or sponsor is limited to one such event in any calendar year.

To ensure that applicable operational safety provisions are met by the pilots conducting charitable and community event flights, the FAA proposes to require that all flights conducted under the exceptions be in compliance with part 91 and subpart A of part 136. These requirements contain safety provisions such as minimum altitudes, horizontal stand off distances, overwater limitations, etc.

Finally, to keep the FAA informed of the intent to conduct charitable and community event flights and to provide the FAA with the information it needs to perform appropriate oversight of aviation, the FAA has proposed a notification provision. Specifically, the FAA proposes that the sponsor of the charitable or community flight(s) provide the local Flight Standards District Offices with at least 7-days advance notice that one or more flights will be conducted under the charitable or community event exception. The details of what must be provided in the notification to the Flight Standards District Office are set forth in the proposed section 91.147.

The proposed § 91.147 sets forth the following specific requirements and prohibitions for the aircraft operator of a flight conducted under the charitable or community events exception. Most of these requirements are similar to § 61.113(d) and have been included in the recent exemptions for charitable and community events.

The specifics of § 91.147 are set forth as follows:

(1) The sponsor of the flights would be responsible for notifying the Flight Standards District Office with responsibility over the area at least 7 days prior to the event. The FAA

proposes that the sponsor of the flights provide a signed letter listing the name of the sponsor, purpose of the event, date, time and location of the event as well as all prior events participated in by the sponsor, pilots or operators.

(2) The sponsor would be responsible for providing a photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries showing that the pilot is current in accordance with §§ 61.56 and 61.57 and, for private pilots, that the pilot has logged at least 500 hours of flight time. These provisions would help the FAA enforce these requirements and ensure that the charitable and community events exception is not used by someone in the business of air transportation.

(3) The event must occur at a public airport, unless otherwise approved by the FAA.

(4) No aerobatic or formation flights would be permitted.

(5) All aircraft would have to hold standard airworthiness certificates and each aircraft would have to be airworthy and in compliance with the requirements of part 91, subpart E.

(6) Flights would be required to be made during day VFR conditions, unless otherwise approved by the Administrator.

(7) All flights would be required to be conducted in accordance with part 136, subpart A.

As proposed, the charitable and community events exception does not apply to flights operated in the Grand Canyon National Park Special Flight Rules Area since those flights already are required to be certificated under part 119. Additionally, the proposed exception does not apply to commercial air tours conducted over Rocky Mountain National Park, since the Air Tour Act specifically prohibited all commercial air tours, regardless of altitude, over that park. The proposed exception applies to other flights over national parks, but they must be conducted in accordance with the provisions of part 136, subpart B and the Air Tour Act. Under the Air Tour Act, operators may conduct five flights per month over a national park or abutting tribal land under part 91, if the operators conducting those flights have a letter of agreement from the FAA Flight Standards District Office for those flights.

As part of creating this exception, the FAA also is proposing to modify § 61.113(d) to establish the number of hours a private pilot must log prior to flying in a charitable or community event. The FAA is proposing that pilots at these events have logged at least 500 hours, instead of the current 200-hour requirement established by the existing § 61.113(d)(1)(ii), herein renumbered as § 61.113(d)(1), for private pilots who want to conduct charitable airlifts. A higher safety standard of 500 hours of flight time for private pilots is proposed for charitable and community events because these events typically involve a larger number of passengers, are held over a period of one to three days, and are generally a pleasure activity for the passenger. The lower standard of 200 hours of flight time for a private pilot conducting a charitable airlift is justified because of the emergency or medical service nature of the charitable airlift.

C. Certification Under Part 119

Under the proposed rule, all air tour operators not excepted under § 119.1(e)(11) would have to be certificated under part 119 to operate in accordance with either part 121 or part 135. This includes those operators who have been operating under part 91, pursuant to the exception in § 119.1(e)(2). The FAA does not anticipate that exemptions from these requirements would be granted. All part 91 operators affected by the changes of this proposal would be encouraged to begin the certification process as early as possible. Air tour operators who conduct commercial air tour operations over units of the national park under part 91 already are required by the Air Tour Act to be certificated under part 119.

The FAA expects that the impact of the certification requirement on Hawaiian operators will be minimal since the majority of air tour operators in Hawaii already are certificated under part 119 and conduct their commercial air tours under part 135 and SFAR 71. Air tour operators at the Grand Canyon, who are regulated under part 93, subpart U, also are required to be certificated under part 119 to operate in accordance with either part 121 or part 135. Operators in the Grand Canyon would be subject to proposed subpart A of part 136. The FAA invites comments on specific rules in proposed subpart A that commenters believe would conflict with current SFAR 50–2 or part 93 rules.

Commercial air tours conducted in accordance with part 121 or part 135 are subject to a higher level of safety than those conducted in accordance with part 91 because of the number of passengers they carry, the type of aircraft used in such operations and the frequency of the operations. For instance, most operators conducting operations in accordance with part 135 and all part 121 operators are required to—

(1) Prepare operating, maintenance, and training manuals, and have them accepted or approved by the Administrator;

(2) Acquire and install any equipment required for their operations under part 121 or part 135, as appropriate;

(3) Train and test their crewmembers to show that those crewmembers are qualified to serve under part 121 or part 135, as appropriate;

(4) Maintain flight locating or dispatch procedures; and

(5) Develop recordkeeping systems to show that they can comply with part 121 or part 135 crewmember and maintenance requirements on an ongoing basis.

All currently certificated air tour operators would have specific authority in their operations specifications to conduct commercial air tours under the proposed rules. The operations specifications would list any special authority or deviations granted to them. Part 91 operators are not normally required to have operations specifications. Under this proposed rule, however, those part 91 operators conducting sightseeing flights who file for certification under part 119 within the designated time period would receive transition operations specifications to allow them to continue operating. These transition operations specifications would be effective until the certification process was completed. During the transition time period, any deviations or authorizations would be noted in their transition operations specifications.

D. Specific Operating Requirements

The FAA proposes to adopt a new subpart, subpart A, in part 136, for commercial air tours that will address the additional risks inherent in these operations. The safety provisions contained in proposed subpart A include: Minimum altitudes; standoff distance, visibility requirements; cloud clearance and requirements for over water operations.

1. Minimum Altitudes

Proposed § 136.3 would establish minimum altitudes for commercial air tours that would apply in all instances, except during takeoff and landing or unless otherwise authorized by the Administrator. The requirement to maintain a minimum altitude is necessary for safety because it gives the pilot additional time to react in an emergency, to notify and instruct passengers, to select a suitable landing area if necessary, and to prepare for a

forced landing if necessary. The base altitudes proposed in these sections for airplanes and helicopters are higher than those contained in § 91.119. The FAA believes that higher altitudes are necessary because these are passenger-carrying operations over typically remote and rugged terrain or over water.

The FAA recognizes that having a higher Above Ground Level (AGL) altitude may, in some instances, create a compressed flight environment. The NTSB voiced this concern in its comments to SFAR 71 (which has an altitude of 1,500 feet AGL). In its comments on SFAR 71, the NTSB stated, ''* * * that the altitude restriction may result in a compression of air traffic at a common altitude of 1,500 feet AGL, spread over fewer routes, and in areas with the best weather. * * * However, the Safety Board believes that the current SFAR 71 altitude restriction should be reviewed to assure that there is no increase in the potential for in-flight collisions or inadvertent encounters with cloud layers.'' The NTSB also asked the FAA to ''* * * consider the negative effects of such restrictions that may result in unintended degradation of the existing level of safety.'' The NTSB reiterated its concern that the SFAR 71 minimum flight altitudes concentrate air traffic ''* * * into a compressed flight environment,'' in its letter to the FAA Administrator dated January 26, 1996.

The FAA has considered these comments in light of its years of experience with both SFAR 71 in Hawaii and regulation of commercial air tours at Grand Canyon National Park. While the FAA agrees with the NTSB that some areas of raw terrain and some scenic areas may experience a compressed flight environment, the FAA believes that these proposed rules would provide the flexibility necessary to separate aircraft to accommodate for traffic density and differences in speed and maneuverability between airplanes and helicopters. Under proposed § 136.3(a), unless otherwise authorized by the Administrator, airplanes and helicopters would be allowed to fly no closer than 1,500 feet AGL above any person, structure, vehicle, or vessel over any area on the surface, including water, or no lower than 1,000 feet AGL over raw terrain. Under proposed § 136.3(b), the Administrator could approve a lower minimum altitude not below 500 feet AGL, at specific areas of raw terrain for single engine helicopters and multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out. Multi-engine helicopters capable of flying under power to a safe landing area with one engine out, could be approved by the Administrator for flight at specific areas of raw terrain for flight at altitudes as low as 300 feet AGL.

Section 136.3(c) would require operators of multi-engine helicopters that are not capable of flying with only one engine to a safe landing area and all single engine helicopters, to have a suitable landing area available at all times when operating at approved altitudes of less than 1,000 feet. These helicopters would also be required to operate at a combination of airspeed and altitude that is outside the avoid area of that helicopter's height/velocity diagram. The operators would be required to designate and document both the specific areas for such low level operations and suitable landing areas, in a form and manner acceptable to the Administrator. Photographs could be used for this purpose. In addition, the Administrator would require the pilot operating the helicopter to demonstrate in flight familiarity with the designated areas and suitable landing areas.

Multi-engine helicopters that are capable of flying under power to a safe landing area with one engine out, when operating at approved altitudes below 1,000 feet AGL would be required to be able to reach a safe landing area after an engine power loss. A safe landing area, in comparison to a suitable landing area required for single engine helicopters, is not required to be within the auto-rotation range of the helicopter, does not require prior FAA approval, and includes any area where the helicopter could safely land.

2. Standoff Distance

Section 136.5 would contain standoff distance requirements for commercial air tours. Under proposed paragraph (a), no person may conduct a commercial air tour closer than a horizontal radius of 1,500 feet to any person, structure, vehicle, or vessel; or 1,000 feet to raw terrain. Paragraph (b) of this section would, however, provide for deviations from the limits for raw terrain. Under this provision, the Administrator could authorize an air tour operator to conduct commercial air tours at site-specific areas of raw terrain, at a horizontal radius of no less than 500 feet to raw terrain for airplanes and 300 feet AGL for helicopters. The determination of whether to grant a deviation under these provisions would be made in accordance with § 136.21.

3. Visibility

Proposed § 136.7 would contain visibility requirements for commercial air tours operating in Class G airspace (*i.e.*, uncontrolled airspace) at an altitude of 1,200 feet or less above the surface, regardless of Mean Sea Level (MSL) altitude. Under the proposed rule, pilots would be prohibited from conducting a commercial air tour in an airplane or a helicopter when the visibility is less than 2 statute miles during the day or 3 statute miles at night. Section 136.7(b) would permit the Administrator to authorize a helicopter to operate during the day when the visibility is at least 1 statute mile. Section 136.7(c) would permit the Administrator to authorize a helicopter to operate at night when the visibility is at least 2 statute miles and the helicopter is being operated at a speed that provides adequate opportunity to see and avoid air traffic or obstructions. The determination of whether to grant a deviation under §§ 136.7(b) or (c) would be made in accordance with § 136.21. This proposal would help pilots avoid changing weather conditions and maintain visual reference to the ground.

Currently, under § 91.155, pilots operating in Class G airspace at 1,200 feet or less above the surface, must have visibility of at least 1 statute mile during the day and 3 statute miles at night. The proposed requirement would be stricter in daytime than that provided for under § 91.155 because the operations that would be conducted under the new subparts are common carriage passenger-carrying operations often conducted over rugged terrain or water. A higher visibility requirement for nighttime operations is not deemed to be necessary at this time. The FAA believes that 3 miles would provide an adequate level of safety.

4. Cloud Clearance

Proposed § 136.9 would provide that while operating in Class G airspace at an altitude of 1,200 feet AGL or less above the surface, regardless of Mean Sea Level (MSL) altitude, no person may conduct a commercial air tour in an aircraft closer than 500 feet below, 1,000 feet above, and 2,000 feet horizontally from any cloud. Section 136.9 would permit deviations from these requirements for certain helicopter operations. The determination of whether to grant a deviation under § 136.9 would be made in accordance with § 136.21.

Under § 136.9, a person could operate a helicopter clear of clouds in accordance with the deviation procedures of § 136.21 if (1) the helicopter is in compliance with the equipment requirements of § 135.159 (carrying passengers under VFR at night or under VFR over-the-top); and (2) the pilot conducting the flight has

demonstrated to the Administrator the ability to execute emergency procedures for inadvertent flight into instrument meteorological conditions (IMC). The FAA believes that these additional requirements will provide an equivalent level of safety that would allow the helicopter operator to operate clear of clouds.

5. Over Water Operations

a. *Engine power loss and ditching, the problem.* Commercial air tours are often conducted over water to facilitate better views of specific scenic areas. This exposes the aircraft to the potential for an emergency water ditching.

Regardless of the type of aircraft, occupants generally experience stress and panic when an aircraft ditches. Stress and panic, added to the extreme physical exertion involved in exiting an aircraft that is filling with water or actually underwater, make escape difficult. Occupants tend to focus on the immediate need to get out of the aircraft and do not always consider equipment they may need to survive once they exit the aircraft. This problem exists even when passengers have been properly briefed pre-flight. However, occupants who successfully exit the aircraft wearing an uninflated life preserver may have an increased chance of survival while swimming to shore or waiting for rescue personnel, provided they understand how to use the life preserver.

Helicopters pose additional problems. Unlike airplanes, helicopters normally roll quickly to one side in water because they are top heavy. Once inverted, the helicopter will fill quickly with water and sink. Additionally, helicopters do not have the gliding capabilities of airplanes, so a single engine helicopter is less likely to be able to reach shoreline prior to landing in the event of an engine failure. Consequently, ditching in helicopters is potentially more dangerous for passengers than ditching in airplanes.

b. *Discussion of existing provisions.* Section 121.340 applies to airplane operations conducted over water under part 121. It requires life preservers or an approved flotation means (*e.g.*, flotation cushions) for any over water operations. Section 121.340(b) provides for a deviation from the requirement for life preservers or an approved flotation means provided the operator can show that the water over which the airplane is to be operated is not of such size and depth that this equipment is required for the survival of its occupants in the event the flight terminates in that water.

Under §§ 121.339(a)(1) and 135.167, aircraft conducting extended over water operations (*i.e.*, more than 50 miles from shore) must be equipped with life preservers. In addition, part 135 contains other requirements for land aircraft engaged in any over water operation. To conduct an over water operation, § 135.183 (performance requirements for land aircraft operated over water) requires that passenger carrying aircraft satisfy one of the following conditions: (1) Be operated at an altitude that allows it to reach land in the event of an engine failure; (2) be necessary for take off or landing; (3) be a multi-engine aircraft with certain single-engine climb characteristics; or (4) be a helicopter equipped with flotation devices (hereinafter called helicopter floats).

c. *Proposed requirements.* Commercial air tours generally operate at lower altitudes for longer periods of time than other types of flights. Considering the heightened risks associated with commercial air tours conducting over water operations, the FAA has concluded that more stringent regulations are necessary for aircraft used in these operations.

Proposed § 136.11 would require occupants of all commercial air tour aircraft operating over water to wear approved life preservers while in flight. The life preserver must be worn un-inflated to permit the passenger to exit the aircraft quickly in an emergency. In addition, single-engine and certain multi-engine helicopters operated over water would be required to have helicopter floats installed on the aircraft.

i. *Life preservers.* There are several types of inflatable and non-inflatable life preservers approved for use on aircraft. Air tour operators using life preservers that are not inflatable would be required to show to the satisfaction of the Administrator that occupants wearing such life preservers can exit the aircraft easily. The most common type of life preserver is inflatable and is worn over the shoulders like a vest. If the life preserver is not worn in-flight un-inflated, the occupant must take it out of a container, put it on, and adjust it. Another type of life preserver is contained in a pouch or pack secured around the waist of each occupant. To use the life preserver, the occupant would pull a tab and then lift the life preserver over his or her head in a single motion. The life preserver is then ready for its intended purpose once inflated. Inflation normally takes about 2 seconds. Another type is a yoke type worn around the neck like a collar.

While the proper donning and securing of a life preserver may not take a lot of time under normal non-stressful situations, it can be a time-consuming process in a time of high stress. Thus, to eliminate the delay this proposal would require air tour operators to ensure that all occupants don life preservers during pre-flight preparation and wear them throughout the duration of the flight.

Deviations would be permitted if the air tour operator could demonstrate that the aircraft is operated over water that is of such size and depth that it is not necessary to wear a life preserver in order to survive in the water. The determination to grant a deviation would be made in accordance with § 136.21.

ii. *Helicopter Floats.* In addition to the life preserver requirement, single engine helicopters and certain multi-engine helicopters operated in commercial air tours over water would have to be equipped with fixed or inflatable floats under proposed § 136.15, unless the flight over water is necessary only for take off or landing. This provision is more stringent than the existing § 135.183 because the FAA has determined that equipping certain helicopters with floats for over water operations increases the likelihood of occupant survival in the event of an emergency water ditching. Floats would allow the helicopter to remain on the surface of the water for a longer period of time, thus allowing the occupants time to exit while the helicopter is still on the surface of the water. For those helicopters equipped with inflatable floats, § 136.15(b) would require that the inflation activation switch be located on one of the primary flight controls (NTSB recommendation No. A–95–63) and armed under certain conditions.

In § 136.15(c), the FAA proposes an 18-month compliance date for retrofitting helicopters with floats and relocating the activation switch where necessary. The FAA requests comments on the proposed compliance date.

6. Passenger Briefing

Proposed § 136.13 would require the pilot in command to ensure that passengers are briefed on water ditching procedures, use of life preservers, and emergency egress from the aircraft before a commercial air tour that includes a flight segment conducted over water. This provision is intended to ensure that occupants understand how to use the life preservers they are wearing and what to do in the event of a water ditching.

7. Helicopter Performance Plan

Proposed § 136.17 would require air tour operators to complete a helicopter performance plan before each departure.

The pilot in command would be required to review and comply with the performance plan. The proposed rule would require the plan to be based on information in the rotorcraft flight manual considering actual conditions that day.

The proposed requirement is intended to enhance flight safety by providing operators with information necessary for weight and balance determinations. The FAA believes that this requirement is necessary in light of certain accidents, including the May 20, 1989 accident discussed above that involved a helicopter on a commercial air tour to view Waialae Falls in Hawaii.

8. Helicopter Operating Limitations

The height/velocity diagram in the Rotorcraft Flight Manual for each helicopter provides the pilot with important safety information that helps the pilot fly at a combination of height above the ground and speed that will allow the pilot in command to land in the event of a power failure. In certain types of operations that do not involve the carriage of passengers for compensation or hire, it is sometimes necessary for a pilot to operate briefly within the avoid area of the height/velocity diagram. The FAA believes that air tour operations require a higher safety standard because they carry members of the public for compensation or hire. SFAR 71 requires pilots to operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height/velocity envelope for that helicopter under current weight and aircraft altitude, except for approach to and transition from a hover. The FAA proposes removing the exception for approach to and transition from a hover because transition from and to a hover is a critical phase in helicopter operations, particularly at the relatively low altitudes above ground level where the height/velocity diagram applies. Operating in accordance with the height/velocity diagram would provide the pilot sufficient time to complete a successful autorotation in the event of a power failure.

Proposed § 136.19 would require the pilot in command to operate the helicopter at a combination of height and forward speed (including hover) necessary to permit a safe landing under current weight and aircraft altitude, in accordance with the height-velocity chart in the rotorcraft flight manual. Using the chart, the pilot in command would determine the altitudes and airspeeds needed to make a safe autorotation in the event of an engine power loss, considering the current weight of the aircraft and atmospheric conditions. This proposal is intended to prohibit pilots from operating within the avoid area of the height/velocity diagram for that helicopter. It is necessary because a safe landing may not be possible if the helicopter is within the avoid area of the height/velocity envelope when an engine power loss occurs. Therefore, the requirement would increase safety in the event of an engine power loss.

9. Deviations

Section 136.21 would set forth the deviation procedures for part 136, subpart A. In determining whether to grant deviations from the minimum altitude, standoff distance, visibility, cloud clearance, life preservers and helicopter float requirements, the Administrator would make sure that the deviation would maintain an equivalent level of safety. In so doing, the Administrator would consider eleven specific factors and any other factors that may provide an equivalent level of safety. Deviations from the life preserver requirement or the float requirement would require the Administrator to consider the size and nature of the body of water, together with any other factors.

The deviation application would be submitted to the certificate holding Flight Standards District Office (FSDO) or the FSDO responsible for issuing transition operations specifications. Deviations would be detailed in the operator's operations specifications, or in the transition operations specifications, if the operator is a non-certificated air tour operator.

E. Compliance Schedule

The proposed rule sets forth the following compliance schedule:

(1) The rule would become effective 120 days after the date of publication of the final rule in the **Federal Register**.

(2) As of the effective date, all operators conducting commercial air tours, including those operators conducting operations under part 91, would be required to begin complying with the safety requirements of subpart A, part 136.

(3) Those operators conducting sightseeing flights under the 25-mile exception at part 119.1(e)(2) would have 180 days to file for certification under part 119 and bring their operations into compliance with part 121 or part 135, as appropriate. However, these operators would be subject to the safety requirements of part 136, subpart A, as of 120 days from the publication date of the final rule.

(4) Operators conducting commercial air tours over water in single engine and some twin engine helicopters that are not equipped with floats would have to retrofit their helicopters by the end of 18 months from publication of the final rule.

(5) Flights would be permitted under § 119.1(e)(2) for a period of 180 days from the publication of the final rule in the **Federal Register**. At the end of the 180 days, however, this exception would no longer be available. Only qualifying charity event flights or community event flights would be able to operate as per § 119.1(e)(11) without complying with part 119 certification requirements and either the part 121 or 135 requirements. These charity or community event flights would have to begin complying with part 136, subpart A by the effective date of the rule.

The FAA requests additional information from the public on how many operators would be affected, what the impact would be on those individual operators, and the compliance schedule.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule:

(1) Has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order but is ''significant''

as defined in DOT's Regulatory Policies and Procedures;
(2) Will have a significant impact on a substantial number of small entities;
(3) Imposes no barriers to international trade; and
(4) Does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

These analyses, available in the docket, are summarized below.

Description of Affected Operators and Aircraft

Based on surveys of FSDOs and an analysis of the FAA's *General Aviation Survey* data, this analysis estimates that one or more provisions of the proposed rule could affect approximately 2,100 operators and 4,400 aircraft. Approximately 1,670 operators with 3,100 aircraft currently provide commercial air tour flights under part 91, and about 450 operators with 1,300 aircraft provide commercial air tours under part 135.

However, these estimates include operators subject to the provisions of the National Parks Air Tour Management Act of 2000 (the Act), and operators that may be eligible for an exception under 14 CFR 119.1(e)(2), and thus are overstated.

The Act required part 91 air tour operators conducting commercial air tour operations over units of the national park system or abutting tribal lands to apply for certification under part 119 with certain exceptions. Therefore, some part 91 air tours already are required to obtain a part 119 certificate. In addition, an unknown number of air tour operators will qualify for an exception from the Act's requirement to obtain a part 119 certificate. An exception in the Act allows operators to continue operating over parks under Part 91 if such activity is permitted under Part 119, and the operator secures a letter from the Administrator and the national park superintendent for that particular park. The total number of all operations under this exception is limited to not more than 5 flights in any 30-day period. When these operators are identified through the implementation of the National Parks Air Tour Management rule the cost and benefit will be adjusted.

Under 14 CFR 119.1(e)(11), part 91 operators engaged in certain air tours or aircraft rides provided in conjunction with charitable or community events, for a local community cause not covered by the preceding exceptions would not have to obtain a part 119 certificate. Data are not available to estimate the number of operators that would be affected by this exception and the cost and benefit will be adjusted when these operators are identified through the exception process.

Analysis of Costs

The proposed rule is estimated to cost approximately $238 million ($148 million, discounted) over ten years. Costs associated with individual provisions are described below.

The proposed amendments, by removing regulatory differences between part 91 sightseeing and part 135 commercial air tour operations, would impose certification and increased operating costs on existing part 91 operators. The FAA expects that part 91 sightseeing operators would take one of three options following issuance of the rule: exit the sightseeing industry; become certificated under part 135 as a single pilot operation, thereby reducing certification costs; or become certificated under part 135 and operate with more than one pilot. Existing part 91 sightseeing operators, therefore, would incur the following costs if required to operate under the current requirements of part 135: (1) Revenue losses to firms that exit the air tour industry; (2) revenue losses to firms that scale back to a single-pilot operation under part 135; (3) administrative costs incurred during the part 135 certification process; and (4) additional operating expenses associated with part 135 operations, including increased personnel and maintenance costs and additional reporting and recordkeeping requirements.

The FAA estimates there are a total of 1,670 operators who conduct operations under part 91, pursuant to the exception at 119.1(e)(2). These operators use a total of 3,100 aircraft. A portion of these operators conduct flights over national parks and they are already required to be certificated under part 91. Approximately 41 percent of these operators conduct air tours less than 10 hours a year. These would likely exit the industry. Approximately 57 percent are one pilot operations, and would likely convert their operations to part 135 operations as one pilot operators. Approximately 2 percent would convert to part 135 operations with more than one pilot.

Based on these cost categories, the FAA estimates that affected part 91 entities would incur approximately $137 million ($85 million, discounted) in certification related costs over a ten-year period. About three percent of these costs, $4.7 million, reflect net revenue losses to entities that choose to exit the industry as a result of the rule.

In addition to the costs of converting to and operating under current part 135 requirements, the proposed rule would impose costs related to a new subpart A in part 136. The FAA estimates that the following part 136 provisions added by this proposal would impose costs on commercial air tour operators already operating under part 135, as well as those obtaining new part 135 certificates: (1) The combined effect of altitude minima, visibility, and ceiling requirements; (2) helicopter float systems; (3) personal life preservers for aircraft occupants, (4) helicopter performance plans, and (5) passenger briefings.

The proposed rule would establish minimum flight altitudes, visibility, and cloud clearance requirements. The cost of these provisions—measured as the expected net revenue loss associated with commercial air tour flights that would be canceled as a result of this proposed rule—is approximately $7.45 million per year. Over ten years, the costs would be approximately $74.5 million ($46 million, discounted). Of the total, approximately $61.5 million ($37.7 million, discounted) would be borne by those currently operating under part 135 and the balance would be borne by part 91 operators that convert to part 135.

While the FAA believes that the requirements described above would reduce the probability of emergency ditching, the FAA also believes that the additional water safety equipment proposed in this rule would contribute to saving lives and is an important element of the overall strategy to improve commercial air tour safety. The proposed rule would require any helicopter flown over water beyond any shoreline to be equipped with floats. Incremental costs associated with this requirement include: (1) Flotation system design approval or certification costs; (2) equipment costs; (3) installation labor costs; (4) aircraft downtime required for installation; (5) maintenance and inspection costs; and (6) operating costs due to the weight of the system.

Assuming that about 25 percent of commercial air tour helicopters, or 112 helicopters, would be affected by these provisions, the total cost of helicopter floats is estimated to be $15.4 million over ten years ($10.3 million, discounted).

When a helicopter without floats lands in water, it typically sinks quickly. Life preservers that were worn un-inflated prior to ditching would increase the chances of surviving either an airplane or helicopter emergency ditching by assisting passengers to swim

to shore. The floats provide additional time to exit the aircraft. For this reason, the proposed rule would also require that all passengers wear an approved un-inflated life preserver throughout commercial air tours conducted over water beyond any shoreline with an aircraft. This would apply whether or not the airplane is within gliding distance of the shoreline, and, for helicopters, whether the helicopter is capable of autorotating to the shoreline. The costs associated with this provision include: (1) Procurement, (2) maintenance (including the incremental cost of vest replacement), and (3) additional operating costs associated with the weight of the vests. In the absence of reliable data on the number of air tours conducted over water beyond any shoreline, the FAA assumes that of the approximately 2,850 airplanes and 450 helicopters currently engaged in air tour or sightseeing service 25 percent of these aircraft would be affected by these provisions. Thus some 713 airplanes and 112 helicopters would incur costs. The FAA requests comment on this assumption and requests that comments be accompanied with clear and supporting economic documentation. The FAA estimates that incremental costs associated with this provision would total approximately $2.2 million ($1.4 million, discounted) over ten years.

The proposed rule would require that an air tour operator complete a helicopter performance plan before each helicopter flight. The pilot in command would be required to comply with the performance plan. The plan must be based on information in the helicopter flight manual, considering the maximum density altitude to which the operation is planned, and must address such elements as maximum gross weight and center of gravity (CG), maximum gross weight and CG for hovering in or out of ground effect, and maximum combination of weight, altitude and temperature. The FAA estimates that the cost of this provision would total approximately $7.6 million ($4.7 million, discounted) over ten years.

The proposed rule would require that passengers be briefed before takeoff for an air tour flight with a flight segment that is conducted over water beyond any shoreline. The briefing would include information on water ditching procedures, use of personal flotation gear, and emergency egress procedures. The FAA estimates that incremental costs associated with this provision would total approximately $1.5 million ($900,000, discounted) over ten years.

Consumer Losses

Air tour passengers may incur direct costs or opportunity costs as a result of this proposed rule. These costs could be attributable to either a tour operator exiting the tour business as a result of this proposed rule or an increase in flight cancellations due to the proposed minimum flight altitudes, visibility, and cloud clearance requirements. The FAA is unable to provide a quantitative estimate of these losses. However, based on the assumptions made in this evaluation, the FAA has estimated the number of air tour flight hours lost. Assuming one-hour tours, there would be approximately 46,000 fewer air tours available to the public or approximately 92,000 fewer air tour flights assuming half hour tours. The FAA requests comments on how the dollar value to consumers of the lesser availability of air tours should be estimated in the final rule.

Analysis of Benefits

The FAA estimates that the proposed rule would accrue annual benefits of approximately $49 million, for total benefits of $490 million ($301 million, discounted) over ten years. The FAA believes the proposed rule would improve the safety of commercial air tours throughout the country. The benefits associated with individual provisions are described below.

The purpose of requiring air carrier certification is to reduce the number of accidents and incidents associated with sightseeing operations. Based on a comparison of accident rates for part 91 sightseeing tours and part 135 commercial air tours, the FAA estimates that restricting the 25-mile exception under § 119.1(e)(2) could produce benefits of $48 million ($30 million, discounted) over ten years.

The estimated benefits associated with minimum altitude, visibility, and cloud clearance requirements can be attributed to: (1) Increased time available for the pilot to react in an emergency, (2) prevention of situations in which the pilot unexpectedly encounters IMC, and (3) avoidance of adverse weather conditions. Estimated benefits are based on an analysis of Hawaiian air tour operations because data for this region are the most complete. This data is different from the data used in the part 119 exception analysis since it includes 10 accidents occurring prior to 1993. It is being employed since it is the best representative data to address the proposed weather provisions. The causes of accidents involving commercial air tours appear, from the data available, to be relatively uniform throughout the country (inadvertent Instrument Meteorological Conditions (IMC), Controlled Flight Into Terrain) and commercial air tours, wherever they occur, tend to have similar characteristics (they fly relatively slow, low, and close to physical landmarks). This analysis shows that the rate of air tour accidents related to low flying and weather is approximately 9.49 accidents per million flight hours. The analysis also shows that while the part 135 accident rate is lower, the fatality rate is much higher than that of part 91 operators. This apparent anomaly is due to two factors: (1) At least for airplane operations, part 121/135 operators tend to have larger airplanes and carry more passengers, therefore, a single fatal accident in a large airplane can significantly raise the fatality rate, and (2) although rare, the typical part 121/135 commercial air tour accident involves controlled flight into terrain at cruise speed, resulting in a high fatality rate and few survivors. On the other hand, part 91 commercial air tour operators experience more accidents than part 135 operators but a higher proportion result from mechanical problems. Accidents caused by mechanical problems are often survivable, particularly helicopter accidents. The FAA estimates that the potential ten-year benefits for the affected air tour fleet would be approximately $405 million ($249 million, discounted).

The benefits associated with helicopter flotation systems and personal life preservers are considered together. Based on an analysis of three overwater accidents, one of which occurred prior to 1993, the FAA estimates that the potential benefits for flotation systems and life preservers are $37 million ($23 million, discounted) over ten years. While Hawaiian air tour operators usually cannot adjust their routes to avoid flying over water, it is possible that air tour operators on the mainland might have more opportunities to adjust their routes to avoid the fuel penalty and the expense of a flotation system. However, even on the mainland, many of the known commercial air tours fly over water at Lake Mead; Niagara Falls; the Statue of Liberty; Ocean City, Maryland; in Alaska and in Florida. The FAA does not know what effect these possible route adjustments would have on the estimated benefits or consumer enjoyment. The FAA therefore requests comments, including economic data, on this issue.

Benefit/Cost Comparison

The FAA estimates the total costs of the proposed rule to be approximately $238 million over ten years ($148 million, discounted) and the total benefits to be approximately $490 million ($301 million, discounted) over the same period. Accordingly, the FAA concludes that the total benefits of the rule would justify the total costs.

To state the comparison differently, the FAA has also computed the cost of the rule per estimated life saved. Based on an adjusted cost of $220 million (to reflect the cost savings attributable to avoided aircraft damage expenses resulting from fewer accidents) and an estimated 130 lives saved if the rule is 100 percent effective over 10 years and no other factors were involved, the rule is estimated to cost $1.7 million per life saved. If, for example, the rule were 75 percent effective, the FAA estimates that the cost per life saved would be $2.2 million. The rule would have to be less than 56 percent effective for the cost per fatality avoided to appreciably exceed $3.0 million.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to Section 603 of the RFA, the Federal Aviation Administration has prepared the following initial regulatory flexibility analysis.

Reasons Why Agency Action Is Being Considered

The FAA is proposing national safety standards to govern commercial air tours as a result of accidents and incidents involving air tour operators and NTSB recommendations made in response to those accidents and incidents. The rationale for each of the major provisions of the NPRM—discussed in detail in the regulatory evaluation—are summarized below:

Restriction of the exception for sightseeing flights under 14 CFR 119.1(e)(2). Based on available accident data, the FAA concludes that (1) there are significant differences in risks between sightseeing flights conducted under part 91 and air tour flights conducted under air carrier/commercial operator regulations, and (2) these risk differentials justify the proposal that the exception (from parts 119, 121, and 135 certification and operating requirements) for part 91 sightseeing operators be restricted. Regulatory action is also justified in view of the public expectation that all operators offering commercial air tours are regulated and surveilled to a level of safety higher than that applied to the general aviation operator.

Safety provisions addressing the risks of overwater operations. Based on an analysis of the risks of overwater operations and NTSB recommendations, the FAA concludes that the benefits of these provisions justify the costs and potential inconvenience to passengers. Based on survivors' testimony, life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Without floats, helicopters sink very quickly upon impact, giving passengers little time to exit the aircraft. The FAA believes that helicopter floats, in conjunction with life preservers, would significantly improve the chances of survival. Airplane passengers will also benefit from the requirement to wear life preservers when air tour flights are conducted over water.

Statement of Objectives and Legal Basis

The objective of this proposal is to provide a higher and uniform level of safety for all commercial air tours. A primary objective of this proposal is to significantly reduce the accident rate for those currently operating under part 91.

Under the United States Code, the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. [*See* 49 U.S.C. 40101(d)(1).] Additionally, it is the Administrator's statutory duty to carry out his or her responsibilities ''in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation.'' [*See* 49 U.S.C. 44701(c).] Accordingly, this notice proposes to amend Title 14 of the Code of Federal Regulations to provide definitions for commercial air tours and establish new safety requirements for such operations.

Description of Small Entities Affected

The FAA concludes that virtually all of the entities affected by the proposed amendments are small according to thresholds established by the Small Business Administration (*i.e.*, employ fewer than 1,500 employees). An estimated 1,672 part 91 operators and 453 part 121/135 operators would be affected by the rule. The part 91 operators own about 3,100 aircraft, while the part 121/135 operators have about 1,300 aircraft. This rule would impose annualized costs per operator of: (1) $600 to part 91 operators who exit the sightseeing industry; (2) $11,200 to part 91 operators who obtain part 135 certificates as single-pilot operators; (3) $75,000 to part 91 operators who obtain part 135 certificates and operate with more than one pilot; (4) $14,400 to current part 135 operators; (5) $19,200 to $39,500 to any operator owning one helicopter that is operated over water; and (6) $220 additional to any operator owning an airplane that is operated over water.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Entities converting to part 135 operations would be subject to the reporting requirements applicable to all part 135 air carriers. The FAA estimates the annualized cost for a single pilot operator would be $510 and for an operator with more than one pilot $2,540. The reporting requirements of part 136 would impose an additional cost of $30 for an airplane that is operated over water, and $340 for any operator owning one helicopter operated over water.

Overlapping, Duplicative, or Conflicting Federal Rules

The proposed rule would not overlap, duplicate, or conflict with existing Federal Rules.

Analysis of Alternatives

The FAA invites comment from potentially affected operators regarding possible alternatives to the provisions discussed above. Some options that were considered during the formulation of this proposal are discussed below.

Grandfather part 91 operators: The FAA considered allowing existing part 91 sightseeing operators to continue operating under part 91, while requiring that operators entering the sightseeing/air tour market operate under part 135. While this alternative could reduce the cost of the rule by more than $150 million over ten years, it could also reduce total benefits by more than $148 million over the same period. While the costs marginally outweigh the benefits, the FAA believes that the rule's objective—improving the safety of air tours and providing one level of air tour safety for the flying public—would not be met under this alternative. Accordingly, the FAA has chosen not to grandfather existing operators.

Lengthen the compliance period: As written, the rule would require certification within six months of the date the final rule is issued. Safety requirements included in subparts O of part 121 and subpart E of part 135 would be met within 120 days from the date the final rule is issued. Helicopter float requirements in part 136.15 have a separate compliance schedule. To reduce the burden on small entities, the FAA considered a longer compliance period. Lengthening the compliance period to ten years, for example, would have saved some compliance costs on aircraft due to be removed from service within the ten-year period. The FAA believes, however, that the sightseeing/air tour accident history justifies government action in the near term. Between 1993 and 2000, there were some 75 accidents involving part 91 sightseeing flights and 53 accidents involving part 135 air tours. Combined, some 110 people died in these accidents. The FAA believes, therefore, that the higher standards should be implemented expeditiously and has chosen not to adopt this alternative.

Require helicopter floats or life preservers instead of both: The proposed rule would require both floats and life preservers for overwater air tour flights in helicopters. In lieu of this requirement, the FAA considered requiring either floats or life preservers—rather than both—similar to existing requirements under SFAR 71 for operations in Hawaii. Under this alternative, operators could avoid the costs of flotation systems ($15.4 million over ten years) by purchasing personal flotation devices ($403,000 over ten years). Although this alternative would result in substantial cost savings, the FAA believes that the safety objectives would not be met through this alternative. Based on survivors' descriptions, the FAA believes that life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Helicopters typically take on water and sink very quickly upon impact, giving passengers little time to exit the aircraft. Helicopter floats, in conjunction with life preservers, would significantly improve the chances of survival. For this reason, the FAA has chosen not to adopt this alternative.

Affordability Analysis

The FAA lacks reliable revenue and profit data for many of the entities affected by this rule and, therefore, is unable to explicitly compare the potential costs imposed to revenues or profits. This is because part 91 operators represent the small end of the industry, entering and exiting the market easily and continuously with no reporting or notification requirements. The FAA believes, however, that the higher-cost provisions of the rule (*e.g.*, helicopter floats) would be borne by the larger, more profitable part 135 entities. The FAA invites comment on the potential impact of the rule on revenues and profits.

Business Closure Analysis

The FAA estimates that about 700 part 91 operators currently providing sightseeing flights would elect to stop providing the service. These operators, however, provide relatively few sightseeing flights (fewer than ten hours annually). The FAA concludes, therefore, that sightseeing revenue represents a small percentage of total revenue, and that these operators would remain in business and obtain revenues elsewhere.

Disproportionality Analysis

Almost all entities in the air tour/sightseeing market are small. Accordingly, the costs imposed by this proposed rule would be borne almost entirely by small businesses. It is likely that the larger of the small entities would be better able to absorb the costs of the rule and could experience a competitive advantage over the smaller entities operating in the same market. Air tour safety needs to be and can be significantly improved, and the FAA believes that the only way to accomplish this is to impose higher standards on these entities.

Key Assumptions Analysis

The FAA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the proposed rule. For example, the FAA assumes that one-quarter of all helicopters in air tour service will incur the costs of floats. It is highly possible that the actual percentage will be lower than one-quarter because some operators already have floats to comply with § 135.183, and others who currently operate marginally over water may change their flight plans to remain over land. Also, the helicopter life preserver costs may be overestimated since there is a voluntary industry standard to which 13 helicopter tour operators subscribe that requires occupants to wear a personal flotation device.

The FAA has also endeavored to avoid underestimating revenue losses to part 91 operators. To estimate lost revenue associated with scaling down operations to obtain a certificate using only a single pilot, the FAA assumes that part 91 operators have as many pilots as they do aircraft. In fact, some operators have one pilot and more than one aircraft. Such operators would experience little or no loss in revenue by becoming single-pilot part 135 operators, even though this analysis assumes some lost revenue for all but the first aircraft.

In addition, the FAA assumes that no requests for exemptions will be granted, that performance penalties apply to all flights (not just air tours), and that additional paperwork will take additional time (*i.e.*, it will not be absorbed into existing recordkeeping duties). Each of these assumptions leads to a conservative estimate of costs.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it would only have a domestic impact and therefore no affect on any trade-sensitive activity. The FAA is unaware of any evidence that suggests that safety regulations (as opposed to noise limitations) adopted in Hawaii and the Grand Canyon National Park, for example, affected the demand for air tour flights by foreign visitors. Conversely, widely publicized air tour accidents may adversely affect all air tour operators. The proposed regulations strengthen the entire air tour industry by standardizing requirements for all operators.

Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Paperwork Reduction Act

This proposal contains the following new information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Organizations and individuals desiring to submit comments on the information, billing, and collection requirements should direct them to the U.S. Department of Transportation Dockets at the address listed in the **ADDRESSES** section of this document.

The FAA can only roughly estimate the effect of the proposed rule on air tour operators because accurate and complete data on the number of operators, tours, and aircraft is not yet available. This is because there are no formal reporting requirements for air tour operations and comprehensive industry data is scarce. One purpose of this rule is to establish a definition of Commercial Air Tour that may be used to subsequently collect data on the air tour industry.

Proposed § 136.13 would require the pilot in command to ensure that passengers are orally briefed before takeoff for an air tour flight that includes a flight segment that is conducted over water beyond any shoreline. This briefing would be in addition to the passenger briefings required by §§ 121.571, 121.573 and 135.117. The briefing would include information on water ditching procedures, use of personal flotation gear, and emergency egress from the aircraft. The FAA estimates that this requirement would affect approximately 101,550 air tours annually by approximately 825 operators, assuming half the required briefings would be provided by a recorded announcement. Each safety briefing would take 3 minutes, and the pilot conducts the briefing at an average rate of $29 per hour. Using these numbers, compliance will require 5,078 hours at a combined annual cost to the affected operators of $147,275.

This proposal would require part 91 air tour operators to apply under part 119 for certification under either part 135 or part 121. The FAA estimates that approximately 60 percent of the 1,650 part 91 operators that are currently conducting air tours would convert to part 135. It is unlikely that any would apply under part 121. The FAA estimates that the remaining part 91 operators would discontinue air tours but continue in other lines of business. This burden would affect only part 91 operators. For many part 91 operators, air tours comprise only an occasional portion of their business, if at all. They would only apply for certification under parts 135 or 121 if the benefits outweigh the costs. For the approximate 980 part 91 operators that would certificate under parts 135 and 119, the certification costs would become applicable. *See* OMB–2120–0039 (for part 135 certification requirements) and OMB–2120–0593 (for part 119 certification requirements).

Proposed § 136.17 would require a performance plan for helicopter tour operations. It would require a one-page document that the operator would develop per the rotorcraft flight manual for each type of helicopter considering density, altitude, gross weight, and center of gravity limits. Although required by this NPRM, an evaluation of aircraft performance is a requirement during flight planning for any flight, including for rotorcraft. The performance would be different for each make and model of helicopter and different for each flight since conditions would be different. These performance plans are already required for helicopters operating in Hawaii. The FAA estimates that 375 helicopters would be required to prepare performance plans. This would require 26,250 hours per year at a cost of $761,250.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (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, information technology (for example, permitting electronic submission of responses).

Individuals and organizations may submit comments on the information collection requirement by December 22, 2003. Comments should be submitted to the address listed in the **ADDRESSES** section of this document.

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. The public will be notified of the OMB control number when assigned.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedures, Air carriers, Aircraft,

Aviation safety, Charter flights, Commuter operations, On demand operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety.

14 CFR Part 135

Aircraft, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Airplanes, Air tours, Air safety, Aviation safety, Commercial air tours, Helicopters, National Parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons set forth above, the Federal Aviation Administration proposes to amend Title 14 of the Code of Federal Regulations parts 61, 91, 119, 121, 135, and 136 as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 61.113 by revising paragraph (d) to read as follows:

§ 61.113 Private pilot privileges and limitations: Pilot in command.

* * * * *

(d) A private pilot may act as pilot in command of an aircraft used only in the following passenger-carrying operations for compensation or hire:

(1) The operation is a charitable airlift for the benefit of a charity identified by the U.S. Department of Treasury that provides emergency or medical service and the pilot has logged at least 200 hours of flight time and complies with all of the conditions of this paragraph; or

(2) The operation is for a charitable or community event described in § 119.1(e)(11) of this chapter, in accordance with the provisions and limitations of § 91.147 and subpart A of part 136, and provided the pilot has logged at least 500 hours of flight time.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

Special Federal Aviation Regulation No. 71—Special Operating Rules For Air Tour Operators in the State of Hawaii [Removed]

4. Remove SFAR No. 71.

5. Add § 91.147 to read as follows:

§ 91.147 Passenger-carrying flights for charity or community events.

(a) A passenger-carrying flight for a charity or community event, as described in § 119.1(e)(11) of this chapter, for which the passengers make a donation to the charitable or community organization may be conducted under the following conditions and limitations:

(1) Unless otherwise authorized by the Administrator, the sponsor of the flight must notify the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event;

(2) The sponsor must furnish a signed letter that shows the name of the sponsor, the purpose of the event, the date and time of the event, the location of the event and all prior events participated in by the sponsor(s), pilot(s) or operator(s);

(3) The sponsor must furnish a photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries that show the pilot is current in accordance with §§ 61.56 and 61.57 of this part, and that any private pilot who will be used has logged at least 500 hours of flight time;

(4) The flight is conducted from a public airport that is adequate for the aircraft to be used, or from another airport that the FAA has approved for the operation;

(5) No aerobatic or formation flights are conducted;

(6) Each aircraft used for the charitable or community event holds a standard airworthiness certificate;

(7) Each aircraft used for the charitable or community event is airworthy and complies with the applicable requirements of subpart E of part 91 of this chapter;

(8) Each flight for the charitable or community event is made during day VFR conditions; and

(9) No person may conduct a flight under the provisions of this paragraph unless that flight is conducted in accordance with the appropriate safety provisions for commercial air tour flights described in part 136, subpart A, of this chapter, for the type aircraft being used.

(b) [Reserved]

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

6. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

7. Amend § 119.1 by revising paragraphs (e)(1), (e)(2), (e)(3) and (e)(4)(iii) and by adding paragraph (e)(11) to read as follows:

§ 119.1 Applicability.

* * * * *

(e) * * *

(1) Student instruction, including introductory flights given by a certificated flight instructor;

(2) Nonstop commercial air tours conducted before [date 6 months from the date the final rule is published], with aircraft having a passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25-statute mile radius of that airport. Such operations are subject to the provisions specified in § 121.1(d) or § 135.1(a)(5) of this chapter, as applicable. For nonstop commercial air tours conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50–2, subpart U of part 93, and part 119, as applicable, apply.

(3) Ferry, demonstration, or training flights, including:

(i) Aerobatic demonstrations or training flights;

(ii) Air combat or formation training flights;

(iii) Aircraft sales demonstration flights; or

(iv) Aircraft demonstration flights other than those specified above (does not include flights where the purpose is sightseeing).

(4) * * *

(iii) Aerial photography or survey (does not include sightseeing);

* * * * *

(11) A nonstop sightseeing flight in support of a charitable or community event when the following requirements are met:

(i) The flight must be in aircraft having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a maximum payload capacity of 7500 pounds;

(ii) The flight must begin and end at the same airport, and be conducted within a 25 statute mile radius of that airport;

(iii) Each charitable or community event must qualify as one of the following:

(A) One of four or fewer events per calendar year, with each event lasting 3 days or fewer in duration, conducted to raise funds for the benefit of a charity identified by the U.S. Department of Treasury;

(B) One of four or fewer events per calendar year, lasting 3 days or fewer in duration each, conducted to raise funds for the benefit of a nonprofit entity, organized under State or Federal law, with one of the entities' purposes being the promotion of aviation safety; or

(C) One event per calendar year, lasting 3 days or fewer in duration, conducted to raise funds for the benefit of a local community cause not covered in paragraphs (e)(11)(iii)(A) or (B) of this section;

(iv) The aircraft operator may retain, or be reimbursed for, only that portion of the passenger payments for the flight that does not exceed the pro rata cost of owning, operating and maintaining the aircraft for that flight;

(v) The beneficiary of the funds raised must not be an entity in the business of transportation by air;

(vi) All flights conducted under this provision must be in compliance with subpart A, part 136 of this chapter and part 91 of this chapter;

(vii) In accordance with the requirements of § 91.147 of this chapter, the sponsor of the flight must notify the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event and furnish the required details of the charitable or community event and the pilots who will be operating the flights;

(viii) An operator or pilot conducting operations described in paragraphs (e)(11)(iii)(A) and (B) of this section must not participate in more than 4 charitable or community events in a calendar year;

(ix) An operator or pilot conducting operations described in subparagraph (e)(11)(iii)(C) of this section must not participate in more than one community event in a calendar year;

(x) Paragraph (e)(11) of this section does not apply to nonstop sightseeing flights for compensation or hire conducted within the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). Flights conducted in the GCNP SFRA must be certificated under part 119 in accordance with section 93.315 of this chapter;

(xi) Paragraph (e)(11) of this section applies to nonstop sightseeing flights conducted over units of the national park, or abutting tribal lands, provided the operator has secured a letter of agreement from the FAA as specified under subpart B of part 136 and is operating in accordance with that agreement; and

(xii) Paragraph (e)(11) of this section does not apply over Rocky Mountain National Park.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

8. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105.

9. Amend § 121.1 by:

a. Revising paragraph (d) introductory text;

b. Redesignating paragraphs (e) and (f) as (f) and (g) respectively; and

c. Adding a new paragraph (e).

The additions and revisions read as follows:

§ 121.1 Applicability.

* * * * *

(d) Before [date 6 months from the date the final rule is published in the **Federal Register**], nonstop commercial air tours conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter with airplanes having a passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport must comply only with §§ 121.455, 121.457, 121.458 and 121.459. An operator who does not hold an air carrier certificate or an operating certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to FAA-approved anti-drug and alcohol misuse prevention programs to perform—

(1) * * *

(2) * * *

(e) Nonstop sightseeing flights described in paragraph (d) of this section must comply with the provisions of Part 136, Subpart A of this chapter by [date 120 days after publication of the final rule in the **Federal Register**].

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

11. Amend § 135.1 by revising paragraph (a)(5) and paragraph (c) to read as follows:

§ 135.1 Applicability.

(a) * * *

(5) Before [date 6 months after the date the final rule is published in the **Federal Register**], nonstop commercial air tours conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport; provided further that these operations must comply only with §§ 135.249, 135.251, 135.253, 135.255, and 135.353 and with part 136, subpart A of this chapter by [date 60 days after the final rule is published in the **Federal Register**].

* * * * *

(c) Before [date 6 months after the date that the final rule is published in the **Federal Register**] for the purpose of §§ 135.249, 135.251, 135.253, 135.255, and 135.353, operator means any person or entity conducting non-stop commercial air tours in an airplane or helicopter that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport, except for flights specified in § 119.1(e)(11) of this chapter.

* * * * *

PART 136—AIR TOURS

12. The authority citation for part 136 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

13. Revise the heading for part 136 as shown above.

14. Redesignate the following sections to consist of a new subpart B—National Parks Air Tour Management:

Current	Redesignated as:
136.1	136.31
136.3	136.33
136.5	136.35

Current	Redesignated as:
136.7	136.37
136.9	136.39
136.11	136.41

15. Add a new subpart A to read as follows:

Subpart A—Commercial Air Tours

Sec.
136.1 Applicability and definitions.
136.3 Minimum altitudes.
136.5 Standoff distance.
136.7 Visibility.
136.9 Cloud clearance.
136.11 Passenger briefing.
136.13 Life Preservers.
136.15 Helicopter floats.
136.17 Helicopter performance plan.
136.19 Helicopter operating limitations.
136.21 Deviation procedures.
136.23–136.29 [Reserved]

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

§ 136.1 Applicability and definitions.

(a) This subpart applies to each person operating or intending to operate a commercial air tour and, when applicable, to all occupants of an aircraft engaged in a commercial air tour. When any requirement of this part is more stringent than any other requirement of this chapter, the person operating the commercial air tour must comply with the requirement in this part. Furthermore, when a flight for compensation or hire has another purpose in addition to sightseeing, that flight is subject to this subpart as well as any other applicable rules.

(b) As of the effective date of this rule, no person may conduct a commercial air tour without notifying the FAA and receiving commercial air tour authority in its operations specifications, or for part 91 operators seeking certification under part 119, receiving transitional operations specifications.

(c) For the purposes of this part the following definitions apply.

Air tour operator means any person who conducts a commercial air tour.

Commercial air tour—

(1) Means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing.

(2) The Administrator may consider the following factors in determining whether a flight is a commercial air tour for purposes of this part—

(i) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(ii) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight;

(iii) The area of operation;

(iv) How often the person offering the flight conducts such flights;

(v) The route of flight;

(vi) The inclusion of sightseeing flights as part of any travel arrangement package;

(vii) Whether the flight in question would have been canceled based on poor visibility of the surface below the route of the flight; and

(viii) Any other factors that the Administrator and Director consider appropriate.

Raw terrain means any area on the surface, including water, devoid of any person, structure, vehicle, or vessel.

Shoreline means that area of the land adjacent to the water of an ocean, sea, lake, river or tidal basin that is above the high water mark and excludes land areas that are intermittently under water.

Suitable landing area means an area that provides the operator reasonable capability to land without damage to equipment or persons, designated by the operator and accepted by the Administrator, at a specific site that provides an emergency landing area for a single-engine helicopter in the event of an engine power loss, or a multiengine helicopter that does not have the capability to reach a safe landing area after an engine power loss.

§ 136.3 Minimum altitudes.

(a) Except when necessary for takeoff and landing, or unless otherwise authorized by the Administrator, no person may conduct a commercial air tour:

(1) Below an altitude of 1,500 feet AGL above any person, structure, vehicle, or vessel.

(2) Below an altitude of 1,000 feet AGL over raw terrain.

(b) Notwithstanding paragraph (a)(2) of this section, operators conducting commercial air tours in helicopters may be authorized by the Administrator to operate:

(1) Multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out, and single engine helicopters, at altitudes as low as 500 feet AGL at site-specific areas of raw terrain in accordance with the deviation procedures of § 136.21, or

(2) Multi-engine helicopters that are capable of flying under power to a safe landing area with one engine out, at altitudes as low as 300 feet AGL at site-specific areas of raw terrain in accordance with the deviation procedures of § 136.21.

(c) When operating at approved altitudes of less than 1,000 feet AGL, air tour operators must comply with the following:

(1) For multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out, and single-engine helicopters:

(i) Have an approved, suitable landing area available at all times and

(ii) Operate at an approved combination of airspeed and altitude that is not within the avoid areas of the helicopter's height velocity diagram, according to the data in the appropriate rotorcraft flight manual. When designating a suitable landing area, the air tour operator must ensure that the area selected can be reached based upon the helicopter's autorotative capabilities, as provided in the appropriate rotorcraft flight manual.

(2) For multi-engine helicopters that are capable of flying under power to a safe landing area with one engine out:

(i) Be able to reach a safe landing area after an engine power loss, considering weight and atmospheric conditions; and

(ii) Operate at an approved combination of airspeed and altitude that is not within the avoid areas of the helicopter's height velocity diagram according to the data in the appropriate rotorcraft flight manual.

(3) For multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out, and single engine helicopters:

(i) Designate and document the specific areas of proposed operation below 1,000 feet and suitable landing areas within those areas, in a form and manner acceptable to the Administrator; and

(ii) Have the pilot demonstrate to the Administrator in-flight familiarity with the designated areas of low-level operation and the suitable landing area.

§ 136.5 Standoff distance.

(a) No person may conduct a commercial air tour in an aircraft closer than a horizontal radius of —

(1) 1,500 feet to any person, structure, vehicle, or vessel; or

(2) 1,000 feet to raw terrain.

(b) Notwithstanding paragraph (a)(2) of this section, an air tour operator of airplanes may be authorized by the Administrator to conduct commercial air tours at specific areas of raw terrain, at a horizontal radius of no less than 500 feet to raw terrain in accordance with the deviation procedures of § 136.21.

(c) Notwithstanding paragraph (a)(2) of this section, air tour operators of

helicopters may be authorized by the Administrator to conduct commercial air tours, at site-specific areas of raw terrain, at a horizontal radius of no less than 300 feet to raw terrain in accordance with the deviation procedures of § 136.21. In such instances, the Administrator may impose additional safety requirements.

§ 136.7 Visibility.

(a) While operating in Class G airspace at an altitude of 1,200 feet or less above the surface, regardless of MSL altitude, no person may conduct a commercial air tour in an aircraft under VFR when the flight visibility is less than the following:

(1) Day—2 statute miles.

(2) Night—3 statute miles.

(b) Notwithstanding paragraph (a)(1) of this section, an air tour operator may be authorized by the Administrator to operate a helicopter during the day in visibility of at least 1 statute mile in accordance with the deviation procedures of § 136.21.

(c) Notwithstanding paragraph (a)(2) of this section, an air tour operator may be authorized by the Administrator to operate a helicopter at night in visibility of at least 2 statute miles when the helicopter can be operated at a speed that provides adequate opportunity to see and avoid air traffic or obstructions in accordance with the deviation procedures of § 136.21.

§ 136.9 Cloud clearance.

(a) Except as provided in paragraph (b) of this section, while operating in Class G airspace at an altitude of 1,200 feet or less above the surface, regardless of MSL altitude, no person may conduct a commercial air tour in an aircraft closer than 500 feet below, 1,000 feet above, or 2,000 feet horizontally from any cloud.

(b) In accordance with the deviation procedures of § 136.21, an air tour operator may be authorized by the Administrator to operate a helicopter clear of clouds when:

(1) The helicopter is in compliance with the equipment requirements of § 135.159 of this chapter; and

(2) The flight is conducted by a pilot who has demonstrated to the Administrator the ability to execute emergency procedures for inadvertent flight into instrument meteorological conditions.

§ 136.11 Passenger briefing.

Before takeoff, each pilot in command of a commercial air tour with a flight segment that is conducted over water shall ensure that each occupant has been briefed on all of the following:

(a) Procedures for water ditching.

(b) Use of required personal flotation equipment.

(c) Procedures for emergency egress from the aircraft in the event of a water landing.

§ 136.13 Life preservers.

(a) All persons conducting commercial air tours in aircraft over water beyond any shoreline must comply with this section, except when the over water operation is necessary only for takeoff or landing, or unless otherwise authorized by the Administrator in accordance with the deviation procedures of § 136.21. This requirement applies regardless of the requirements of § 135.183 of this chapter, or whether the airplane is capable of gliding to the shoreline or the helicopter is capable of autorotating to the shoreline.

(b) Except as provided in paragraph (d) of this section, prior to take-off the air tour operator and pilot in command must ensure that each occupant is wearing an approved un-inflated life preserver that is ready to use for its intended purpose.

(c) An air tour operator may be authorized by the Administrator to use one of the following for any occupant with the physical capacity to use it:

(1) A life preserver contained in a pouch that is worn around the waist, where the un-inflated life preserver can be operated by pulling on a tab and lifting it over the head in a single motion and the life preserver is ready to use for its intended purpose, once inflated; or

(2) Any other type of life-preserver configuration determined by the Administrator to be comparable to the life preserver described in paragraph (c)(1) of this section with respect to speed, ease of donning, and use.

(d) An air tour operator may be authorized by the Administrator to operate an aircraft over water without complying with paragraphs (b) or (c) of this section, if the air tour operator shows in accordance with the deviation procedures under § 136.21 that the water over which the aircraft is to be operated is not of such size and depth that wearing a life preserver, as prescribed in this section, would be required for the survival of its occupants in the event the flight terminates in that water.

§ 136.15 Helicopter floats.

(a) A helicopter used in commercial air tours must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if—

(1) It is a single-engine helicopter; or

(2) It is a multi-engine helicopter that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the helicopter's rotorcraft flight manual.

(b) Each helicopter required to be equipped with an inflatable flotation system must:

(1) Have the activation switch for the flotation system on one of the primary flight controls and

(2) Have the flotation system armed when the helicopter is over water and is flying at a speed that does exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.

(c) Air tour operators required to comply with paragraphs (a) and (b) of this section must meet these requirements on or before [date 18 months after the date the final rule is published in the **Federal Register**.]

(d) The requirements of this section do not apply if the flight over water is necessary only for take-off or landing.

(e) An air tour operator may be authorized by the Administrator to operate an aircraft over water without complying with paragraphs (a) or (b) of this section, if the air tour operator shows in accordance with the deviation procedures under § 136.21 that the water over which the aircraft is to be operated is not of such size and depth that helicopter floats, as prescribed in this section, would be required for the survival of its occupants in the event the flight terminates in that water.

§ 136.17 Helicopter performance plan.

(a) Each air tour operator must complete a performance plan for each helicopter commercial air tour before departure. The pilot in command must review for accuracy and comply with the performance plan on the day the flight is flown. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM) for that helicopter, taking into consideration the maximum density altitude for which the operation is planned, in order to determine:

(1) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(2) Maximum gross weight and CG limitations for hovering out of ground effect; and

(3) Maximum combination of weight, altitude, and temperature for which height-velocity information in the RFM is valid.

(b) [Reserved]

§ 136.19 Helicopter operating limitations.

Except for take-off and landing, the pilot in command shall operate a helicopter at a combination of height and forward speed (including hover) necessary to permit a landing in the event of an engine power loss, in accordance with the height-velocity diagram in the rotorcraft flight manual for the helicopter and the helicopter's current weight and altitude.

§ 136.21 Deviation procedures.

An air tour operator may be issued a deviation by the Administrator from the following sections of this subpart if the Administrator finds that the operation can be conducted with an equivalent level of safety under the terms of the deviation: § 136.3, Minimum altitudes; § 136.5, Standoff distance; § 136.7, Visibility; § 136.9, Cloud clearance; § 136.13, Life preservers; and § 136.15, Helicopter floats.

(a) For § 136.3, Minimum altitudes; § 136.5, Standoff distance; § 136.7, Visibility; and § 136.9, Cloud clearance, the Administrator considers the following factors, as appropriate, when determining whether to approve a deviation:

(1) Traffic density;

(2) Mix of traffic;

(3) Nature of operation;

(4) Ability to operate the aircraft at a speed that will provide adequate opportunity to see and avoid air traffic and obstructions;

(5) Character of terrain;

(6) Size of the area of operation;

(7) Pilot workload (*e.g.*, number of pilots performing an operation and whether routine narrative is provided);

(8) Quality and quantity of meteorological services;

(9) Navigational facilities;

(10) Weather conditions in the area of operation;

(11) Size and type of the aircraft; and

(12) Any other relevant factors that may provide an equivalent level of safety.

(b) For § 136.13, Life preservers, and § 136.15, Helicopter floats, the Administrator will consider the size and nature of the body of water and any other factors, as appropriate, when determining whether a deviation will be approved.

(c) An application for a deviation under this part must be made in writing and in a manner prescribed by the Administrator. The application must be submitted to the certificate-holding Flight Standards District Office or the Flight Standards District Office responsible for issuing operations specifications.

(d) Any deviation granted under this section will be detailed in the certificated air tour operator's operations specifications or in transition operations specifications issued to a non-certificated air tour operator, pending certification. In granting a deviation, the Administrator may impose additional requirements to provide an equivalent level of safety. A deviation is effective when placed in the air tour operator's operations specifications.

§§ 136.23–136.29 [Reserved]

16. In newly designated subpart B of part 136, remove the words ''this part'' wherever they appear and add, in their place, the words ''this subpart''.

Issued in Washington, DC, on October 9, 2003.

James Ballough,

Director, Flight Standards Service.

[FR Doc. 03–26104 Filed 10–21–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
October 22, 2003

Part IV

Office of Government Ethics

5 CFR Part 2601

Implementation of Office of Government Ethics Statutory Gift Acceptance Authority; Final Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2601

RIN 3209–AA21

Implementation of Office of Government Ethics Statutory Gift Acceptance Authority

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is adopting as final a proposed regulation implementing the agency gift acceptance authority contained in section 2 of the Office of Government Ethics Authorization Act of 1996, which authorizes OGE to accept gifts and certain other items for the purpose of aiding or facilitating the work of the agency and which requires the Director of OGE to issue regulations establishing criteria for determining whether the exercise of this gift acceptance authority is appropriate. This rule states the policy regarding the use of this authority, provides definitions of key terms, establishes guidelines for the solicitation and acceptance of gifts, states certain conditions for acceptance and use of gifts, and establishes accounting requirements. Although this rule implements authority that is specific to OGE, it addresses several agency gift acceptance issues of general concern to executive branch agencies. Therefore, it could provide guidance to other agencies in administering their gift authority.

EFFECTIVE DATE: This rule will become effective November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Allison C. George, Associate General Counsel, Office of Government Ethics, Telephone: (202) 482–9300; TDD: (202) 482–9293; FAX (202) 482–9237.

SUPPLEMENTARY INFORMATION: In this rulemaking document, OGE is adopting final agency gift acceptance authority regulations, for codification at 5 CFR part 2601. On May 5, 2003, at 68 FR 23875–23883 (as separate part VII), OGE published a proposed rule that would implement section 2 of the Office of Government Ethics Authorization Act of 1996 (the 1996 Reauthorization Act), Pub. L. 104–179, 110 Stat. 1566, which amended the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. app. § 403(b). The proposed rule invited comments from the public to be received by OGE on or before August 4, 2003. No comments were received. Therefore, OGE is finalizing this rule without change. For additional background information and a discussion of the regulatory provisions, interested parties may consult the preamble to the proposed rule, which was published in the **Federal Register** at 68 FR 23875–23883.

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive order since it is not a significant regulatory action within the meaning of the Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects OGE itself and OGE employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this regulation would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this regulation involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

List of Subjects in 5 CFR Part 2601

Conflict of interests, Government employees, Government property.

Approved: October 10, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding a new part 2601 to read as follows:

PART 2601—IMPLEMENTATION OF OFFICE OF GOVERNMENT ETHICS STATUTORY GIFT ACCEPTANCE AUTHORITY

Subpart A—General Provisions

Sec.
2601.101 Authority.
2601.102 Purpose.
2601.103 Policy.
2601.104 Relationship to other authorities.
2601.105 Definitions.

Subpart B—Guidelines for Solicitation and Acceptance of Gifts

2601.201 Delegation.
2601.202 Procedure.
2601.203 Conflict of interest analysis.
2601.204 Conditions for acceptance.

Subpart C—Accounting Requirements

2601.301 Accounting of gifts.

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2601.101 Authority.

Section 2 of the Office of Government Ethics Authorization Act of 1996, amending the Ethics in Government Act of 1978, as codified at 5 U.S.C. app. 403(b), authorizes the Office of Government Ethics (OGE) to accept and utilize gifts for the purpose of aiding or facilitating the work of OGE.

§ 2601.102 Purpose.

The purpose of this part is to establish guidelines governing the implementation of OGE's gift authority by defining its scope and application, by prescribing the policies, standards and procedures that govern the solicitation, acceptance and use of gifts, and by setting forth accounting requirements related to the use of this authority.

§ 2601.103 Policy.

(a) *Scope.* The Office of Government Ethics may use its statutory authority to solicit, accept and utilize gifts to the agency that aid or facilitate the agency's

work. The authority to solicit, accept and utilize gifts includes the authority to receive, administer, spend, invest and dispose of gifts. Gifts to the agency from individuals or organizations can be a useful adjunct to appropriated funds and may enhance the agency's ability to fulfill its mission, as well as further mutually beneficial public/private partnerships, or other useful arrangements or relationships. Such uses of this authority are appropriate provided that solicitation or acceptance of a gift does not compromise the integrity of OGE, its programs or employees.

(b) *Use of gifts.* Gifts to OGE may be used to carry out any activity that furthers the mission, programs, responsibilities, functions or activities of the agency. Gifts may be used to carry out program functions whether or not appropriated funds are available for that purpose, provided that such expenditures are not barred by law or regulation. Gifts may also be used for official travel by employees to events or activities required to carry out the agency's statutory or regulatory functions. Gifts to the agency may also be used for the travel expenses of spouses accompanying employees on official travel, if such travel could be paid for by appropriated funds.

(c) *Sources.* Generally, gifts may be solicited or accepted from any source, including a prohibited source, provided that the standards of this part are met. Gifts generally should be made directly to the agency and not through intermediaries. However, where a gift is offered by an intermediary, both the intermediary and the ultimate source of the gift should be analyzed to determine whether acceptance would be appropriate.

(d) *Endorsement.* Acceptance of a gift pursuant to this part shall not in any way be deemed to be an endorsement of the donor, or the donor's products, services, activities, or policies. Letters to a donor expressing appreciation of a gift are permitted.

(e) *Type of gift.* The agency may solicit or accept any gift that is within its statutory authority. However, as a matter of policy, OGE will not solicit or accept gifts of currency pursuant to this part. Donors who offer currency should be advised that the gift may be made by check or money order payable to the U.S. Office of Government Ethics.

§ 2601.104 Relationship to other authorities.

(a) This part does not apply to gifts to the agency of:

(1) Travel and travel-related expenses made pursuant to the authority set forth in 31 U.S.C. 1353; or

(2) Volunteer services made pursuant to the authority set forth in 5 U.S.C. 3111.

(b) This part does not apply to gifts to an individual agency employee, including:

(1) Gifts of contributions, awards or other expenses for training made pursuant to the authority set forth in the Government Employees Training Act, 5 U.S.C. 4111;

(2) Gifts made by a foreign government or organization, or representative thereof, pursuant to the authority set forth in 5 U.S.C. 7342;

(3) Gifts made by a political organization that may be accepted by an agency employee who, in accordance with the terms of the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns; or

(4) Gifts made directly or indirectly that an employee may accept in a personal capacity pursuant to the authority set forth in 5 CFR part 2635, subpart B or subpart C.

§ 2601.105 Definitions.

For the purposes of this part:

Administration Division means the Administration Division of the Office of Government Ethics.

Agency means the Office of Government Ethics (OGE).

Authorized agency official means the Director of the Office of Government Ethics or the Director's delegatee.

Director means the Director of the Office of Government Ethics.

Employee means an employee of the Office of Government Ethics.

Gift means any gift, donation, bequest or devise of money, use of facilities, personal property, or services and may include travel reimbursements or payments for attendance at or participation in meetings or events.

Money means currency, checks, money orders or other forms of negotiable instruments.

Personal property means all property, tangible or intangible, not defined as real property, and includes stocks and bonds.

Prohibited source means any source described in 5 CFR 2635.203(d).

Services means all forms of voluntary and uncompensated personal services.

Use of facilities means use of space, equipment and all other facilities.

Subpart B—Guidelines for Solicitation and Acceptance of Gifts

§ 2601.201 Delegation.

(a) The authority to solicit, accept, and utilize gifts in accordance with this part resides with the Director.

(b) The Director may delegate this authority.

(c) Authorities delegated in accordance with paragraph (b) of this section may be redelegated only through a written delegation authorizing an agency employee to solicit or accept specific types of gifts, or a gift for a specific purpose, function, or event.

§ 2601.202 Procedure.

(a) The authorized agency official shall have the authority to solicit, accept, refuse, return, or negotiate the terms of acceptance of a gift.

(b) An employee, other than an authorized agency official, shall immediately forward all offers of gifts covered by this part regardless of value to an authorized agency official for consideration and shall provide a description of the gift offered. An employee shall also inform an authorized agency official of all discussions of the possibility of a gift. An employee shall not provide a donor with any commitment, privilege, concession or other present or future benefit (other than an appropriate acknowledgment) in return for a gift.

(c) Only an authorized agency official may solicit, accept or decline a gift after making the determination required under the conflict of interest standard in § 2601.203. An authorized agency official may find that, while acceptance of an offered gift is permissible, it is in the interest of the agency to qualify acceptance by, for example, limiting the gift in some way. Approval of acceptance of a gift in-kind after receipt of the gift may be granted as deemed appropriate by the authorized agency official.

(d) Gifts may be acknowledged in writing in the form of a letter of acceptance to the donor. The amount of a monetary gift shall be specified. In the case of nonmonetary gifts, the letter shall not make reference to the value of the gift. Valuation of nonmonetary gifts is the responsibility of the donor. Letters of acceptance shall not include any statement regarding the tax implications of a gift, which remain the responsibility of the donor. No statement of endorsement should appear in a letter of acceptance to the donor.

(e) A gift may be declined by an authorized official orally or in writing. A donor may be advised of the reason why the gift has been declined. A gift

may be declined solely as a matter of agency discretion, even though acceptance would not be precluded under the conflict of interest standard in § 2601.203.

(f) A gift of money or the proceeds of a gift shall be deposited in an appropriately documented agency fund. A check or money order should be made payable to the ''U.S. Office of Government Ethics.''

§ 2601.203 Conflict of interest analysis.

(a) A gift shall not be solicited or accepted if the authorized agency official determines that such solicitation or acceptance of the gift would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out OGE responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(b) In making the determination required under paragraph (a) of this section, an authorized agency official may be guided by all relevant considerations, including, but not limited to the following:

(1) The identity of the donor;

(2) The monetary or estimated market value or the cost to the donor;

(3) The purpose of the gift as described in any written statement or oral proposal by the donor;

(4) The identity of any other expected recipients of the gift on the same occasion, if any;

(5) The timing of the gift;

(6) The nature and sensitivity of any matter pending at the agency affecting the interests of the donor;

(7) The significance of an individual employee's role in any matter affecting the donor, if benefits of the gift will accrue to the employee;

(8) The nature of the gift offered;

(9) The frequency of other gifts received from the same donor; and

(10) The agency activity, purpose or need that the gift will aid or facilitate.

(c) An authorized agency official may ask the donor to provide in writing any additional information needed to assist in making the determination under this section. Such information may include a description of the donor's business or organizational affiliation and any matters that are pending or are expected to be pending before the agency.

§ 2601.204 Conditions for acceptance.

(a) No gift may be accepted that:

(1) Attaches conditions inconsistent with applicable laws or regulations;

(2) Is conditioned upon or will require the expenditure of appropriated funds that are not available to the agency;

(3) Requires the agency to provide the donor with some privilege, concession or other present or future benefit in return for the gift;

(4) Requires the agency to adhere to particular requirements as to deposit, investment, or management of funds donated;

(5) Requires the agency to undertake or engage in activities that are not related to the agency's mission, programs or statutory authorities; or

(6) Would reflect unfavorably upon the ability of the agency, or any of its employees, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(b) [Reserved].

Note to § 2601.204: Nothing in this part shall prohibit the agency from offering or providing the donor an appropriate acknowledgment of its gift in a publication, speech or other medium.

Subpart C—Accounting Requirements

§ 2601.301 Accounting of gifts.

(a) The Administration Division shall ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures.

(b) The Administration Division shall maintain an inventory of donated personal property valued at over $500. The inventory shall be updated each time an item is sold, excessed, destroyed or otherwise disposed of or discarded.

(c) The Administration Division shall maintain a log of all gifts valued at over $500 accepted pursuant to this part. The log shall include, to the extent known:

(1) The name and address of the donor;

(2) A description of the gift; and

(3) The date the gift is accepted.

[FR Doc. 03–26343 Filed 10–21–03; 8:45 am]

BILLING CODE 6345–02–P

Federal Register

Wednesday,
October 22, 2003

Part V

Department of Education

34 CFR Part 222
Impact Aid Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810–AA94

Impact Aid Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues these proposed regulations to implement the Impact Aid Discretionary Construction Program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001. The program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible school districts that receive Impact Aid formula funds. These proposed regulations incorporate statutory requirements and provide guidance for applying and qualifying for, as well as spending, the Federal funds provided under this program. These proposed regulations would apply to the grant competitions after fiscal year (FY) 2002.

DATES: We must receive your comments on these proposed regulations on or before November 21, 2003.

ADDRESSES: Address all comments about these proposed regulations to Catherine Schagh, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244. If you prefer to send comments through the Internet, use the following address: *Impact.Aid@ed.gov.*

If you want to comment on the information requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act of 1980 section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Marilyn Hall, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6244. Telephone: (202) 260–3858 or via the Internet, at: *Impact.Aid@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. The Secretary is particularly interested in comments on proposed §§ 222.176, 222.185, and 222.192.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3C101, 400 Maryland Avenue, SW., Washington, DC, 20202–6244 between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

These proposed regulations implement the Impact Aid Discretionary Construction Program, which is authorized under section 8007(b) of the Act, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110, enacted January 8, 2002). Final regulations for the FY 2002 grant competition were published in the **Federal Register** on August 16, 2002. These proposed regulations are similar to the final FY 2002 regulations, but we have included clarifying language based on our own experiences in implementing this program. These clarifications are made in sections 222.172, 222.173, and 222.176. These proposed regulations are otherwise substantially identical to the final rule for FY 2002.

The purpose of the Impact Aid Discretionary Construction Program is to assist certain eligible Impact Aid school districts in meeting the emergency or modernization needs of their school facilities.

The following is a summary of the proposed regulatory provisions, such as interpretations of statutory text, and standards and procedures for the operation of the program that the Secretary believes are necessary for implementing the statute. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Section 222.172 What Activities May an LEA Conduct With Funds Under This Program?

The proposed regulations detail the types of construction activities that recipients of emergency and modernization grants may conduct with grant funds. The regulations clarify that allowable repairs and improvements must be for educational facilities, and this does not include improvements to school grounds or teacher housing. These proposed provisions also clarify that both emergency and modernization grants may be used for new construction only if a local educational agency (LEA) holds title to an existing facility and the proposed construction meets the standards detailed in the regulations for determining that improving a current facility is less cost-effective than replacing it.

Section 222.173 What Activities Are Prohibited?

Proposed section 222.173 specifies the various types of activities that may not be supported with grant funds under this program. The statute prohibits using grant funds for acquiring real property but allows these funds to be used for the construction of a new building in limited circumstances. Since a building is also typically considered to be ''real property,'' the proposed provision clarifies, consistent with the authorizing statute, that grant funds cannot be used to acquire an interest in real property except when the Secretary determines under § 222.173 that construction of a new building will be permitted.

Section 222.176 What Definitions Apply to This Program?

The proposed regulations define the term ''emergency'' to include health and safety conditions that present an immediate threat to the building's occupants, as well as those conditions that will present health and safety hazards in the very near future, including accessibility for the disabled as part of a larger project. The proposed definition also provides examples of some of the types of health and safety conditions that the Secretary anticipates the emergency grants will address.

The proposed provisions clarify that ''modernization'' grants must be used to repair, renovate, alter, or extend facilities in order to support a contemporary educational program that is consistent with the laws, standards, or common practices in the LEA's State. Since the Secretary anticipates that the need for these grants will exceed the amount of available funds, this provision clarifies that the Secretary does not intend for these grants to be used to fund facility modernization projects that exceed a State's standards.

Sections 222.177–182 Eligibility

The statutory eligibility criteria for emergency and modernization grants are complex and are further complicated by funding provisions that specify, in descending priority order, two emergency grant and two modernization grant eligibility categories. These proposed regulations provide details on each of the four eligibility categories so that applicants can determine under which funding priority their application will be considered. This will be particularly important for applicants to understand, because the statute mandates that the Secretary must first use available funds for applications in the first priority. After all eligible applications in the first priority have been funded, the Secretary considers applications in the second priority, followed by the third and fourth priorities in descending order.

Sections 222.183–187 How To Apply for a Grant

The statute does not specify a complete application process; the proposed regulations provide for an application that requests objective and subjective information that will be used to rank applicants. An applicant will also be required to agree to certain assurances that are contained in the application package. In addition, the Secretary, before making final award decisions, will request detailed data on the funds that the highest-ranked applicants have available to contribute to their proposed projects. The proposed regulations specify that the applications must be based on student and fiscal data from the preceding fiscal year, unless satisfactory fiscal data from that year are not available.

The regulations clarify that an applicant may submit more than one emergency repair application for the same facility, and may also submit both modernization and emergency repair applications for the same facility. Emergency repair grant applications must include an independent certification of the health and safety concerns, signed by a local building inspector, a licensed architect, or a licensed engineer.

Sections 222.188–194 How Grants Are Made

The Department will review applications separately among the four funding priorities. Field readers will review the applications by category, based on the selection criteria and any other applicable factors that will be detailed in an application notice published in the **Federal Register**. Field readers will also evaluate and make recommendations to the Department as to whether emergency repair applications submitted under the first and second priorities represent valid health and safety considerations under the program definitions. Similarly, when field readers review modernization applications under the third and fourth priorities, they will evaluate and make recommendations to the Department as to whether those applications represent valid modernization considerations under the program definitions.

Prior to making final funding decisions and determining final grant awards, the Secretary may verify certain data with applicants' States and will also assess available resources for all highly ranked grantees, limitations on the grant awards for certain grantee categories, and the availability of in-kind contributions. The Secretary considers as available to fund the project the closing capital fund balance identified in the LEA's audited financial report for the prior year, not including $100,000 or ten percent of the average annual capital expenditures of the applicant for the three previous fiscal years, whichever is greater.

As detailed in the ''Eligibility'' portion of the proposed regulations, the Secretary will generally fund all eligible applications in the first application priority group before funding applications in each of the next three groups. This will vary if the remaining funds are insufficient to fund another project in the highest-priority group but adequate to fund a project in the next priority group. The next-ranked applicants in the higher-priority group will be offered the opportunity to accept funds for a portion of their projects before lower-priority projects are funded. If they accept the lower grant amount, they would forfeit the right to have their applications carried over and considered for funding in the next year's competition. However, they could submit new applications for the next year for the remainder of their projects. If they do not accept the lower grant award, the application is carried over and considered in the next year's competition.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs. We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them

into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 222.189 What funding priority does the Secretary give to applications?)

• Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small LEAs receiving Federal funds under this program. However, in the FY 2002 grant competition, fewer than 40 applications that were eligible to be evaluated by field readers were small entities. In addition, we do not believe that the regulations would have a significant economic impact on the limited number of small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision.

The proposed regulations would benefit both small and large entities in that they clarify confusing and complex statutory requirements. Also, since the statute requires Impact Aid school districts to apply if they wish to receive these discretionary funds, the Department would not be able to award these funds without the specified application information. The proposed application process will ensure that districts do not provide significant amounts of information that is already available to the Department from annual Impact Aid formula fund applications.

In addition, we anticipate that electronic applications will first be available for the FY 2003 competition, which will further minimize burden to all applicants. The software will populate certain application data fields for applicants that submitted an FY 2003 Impact Aid section 8003 application, and will have built-in checks for completion of all necessary items. This software will reduce the burden on applicants of organizing and entering data that were already submitted to the Impact Aid Program, will help applicants determine whether their LEAs meet the program's eligibility requirements, and will reduce the number of errors in applications. Also, whenever possible, certain fiscal data are collected from State agencies, which are not defined as ''small entities'' in the Regulatory Flexibility Act.

The regulations would impose minimal paperwork burden requirements for all applicants and minimal requirements with which the grant recipients must comply. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Impact Aid Discretionary Construction Program.

Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be placed in the public comment file and considered in the preparation of the final regulations.

Paperwork Reduction Act of 1995

Sections 222.183, 222.184, 222.185, and 222.186 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education submitted a copy of the information collection ''Impact Aid Discretionary Construction Grant Program'' to the Office of Management and Budget (OMB) for its review and approval. OMB granted provisional clearance on the information collection requirements associated with the FY 2002 grant application package. The Department nevertheless sought public comment on these information collection requirements for the FY 2003 application, but did not receive any comments.

The Department will use the information collected in the application to determine whether an applicant meets the basic eligibility requirements of section 8007(b) of the Act, to determine whether the applicant is requesting an emergency or modernization grant, and to determine which of the four priorities described in the statute applies to the application. In addition, information on the application will be used to evaluate applications within each of the four priorities. Among the criteria the Secretary is required to consider are the applicant's total assessed value of real property that may be taxed for school purposes, its use of bonding capacity, and the nature and severity of its need for funds.

Since the statute requires applicants to apply for funds, the Department would not be able to award these funds without the application to collect the required information.

We collect information only once for each school for which the applicant seeks funds. We estimate the annual reporting and recordkeeping burden for this collection of information to average 5.25 hours for each respondent for 250 applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. In addition, we estimate that 188 of these applications will include the preparation of an emergency certification form, requiring 0.75 hours for completion by an independent certifying official. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 1,453.5 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **FOR FURTHER INFORMATION** section of this preamble.

We consider your comments on this proposed collection of information in—

• Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring 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.

Your comments will be considered for the FY 2003 competition. To ensure that OMB gives your comments full consideration, we ask that you send comments concerning the collection of information contained in these regulations between 30 and 60 days

after publication of this document in the **Federal Register**.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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You may also view this document in PDF at the following site: *http://www.ed.gov/programs/8007b/.*

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.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.041C Impact Aid Discretionary Construction Program)

List of Subjects in 34 CFR Part 222

Education, Education of children with disabilities, Educational facilities, Elementary and secondary education, Federally affected areas, Grant programs-education, Indians—education, Public housing, Reporting and recordkeeping requirements, School construction, Schools.

Dated: October 17, 2003.

Ronald J. Tomalis,

Acting Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising subpart L of part 222 to read as follows:

PART 222—IMPACT AID PROGRAMS

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

2. Revise subpart L of part 222 to read as follows:

Subpart L—Impact Aid Discretionary Construction Grant Program Under Section 8007(b) of the Act

General

Sec.
222.170 What is the purpose of the Impact Aid Discretionary Construction grant program (Section 8007(b) of the Act)?
222.171 In general, what LEAs may be eligible for Discretionary Construction grants?
222.172 What activities may an LEA conduct with funds received under this program?
222.173 What activities are prohibited?
222.174 What other prohibitions apply to these funds?
222.175 What regulations apply to recipients of funds under this program?
222.176 What definitions apply to this subpart?

Eligibility

222.177 What eligibility requirements must an LEA meet to apply for an emergency grant under the first priority?
222.178 What eligibility requirements must an LEA meet to apply for an emergency grant under the second priority?
222.179 Under what circumstances may an ineligible LEA apply on behalf of a school for an emergency grant under the second priority?
222.180 What eligibility requirements must an LEA meet to apply for a modernization grant under the third priority?
222.181 What eligibility requirements must an LEA meet to apply for a modernization grant under the fourth priority?
222.182 Under what circumstances may an ineligible LEA apply on behalf of a school for a modernization grant under the fourth priority?

How to Apply for a Grant

222.183 How does an LEA apply for a grant?
222.184 What information must an application contain?
222.185 What additional information must be included in an emergency grant application?
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222.187 Which year's data must an SEA or LEA provide?

How Grants Are Made

222.188 What priorities may the Secretary establish?
222.189 What funding priority does the Secretary give to applications?
222.190 How does the Secretary rank and select applicants?
222.191 What is the maximum award amount?
222.192 What local funds may be considered as available for this project?
222.193 What other limitations on grant amounts apply?
222.194 Are ''in-kind'' contributions permissible?

Conditions and Requirements Grantees Must Meet

222.195 How does the Secretary make funds available to grantees?
222.196 What additional construction and legal requirements apply?

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

General

§ 222.170 What is the purpose of the Impact Aid Discretionary Construction grant program (Section 8007(b) of the Act)?

The Impact Aid Discretionary Construction grant program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that receive formula Impact Aid funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.171 In general, what LEAs may be eligible for Discretionary Construction grants?

(a) Applications for these grants are considered in four funding priority categories. The specific requirements for each priority are detailed in §§ 222.177 through 222.182.

(b)(1) Generally, to be eligible for an emergency construction grant, an LEA must—

(i) Enroll a high proportion (at least 40 percent) of federally connected children in average daily attendance (ADA) who reside on Indian lands or who reside on Federal property and have a parent on active duty in the U.S. uniformed services;

(ii) Have a school that enrolls a high proportion of one of these types of students;

(iii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act; or

(iv) Meet the specific numeric requirements regarding bonding capacity.

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of the emergency.

(c)(1) Generally, to be eligible for a modernization construction grant, an LEA must—

(i) Be eligible for Impact Aid funding under either section 8002 or 8003 of the Act;

(ii) Be eligible for funding for heavily impacted LEAs under section 8003(b)(2) of the Act;

(iii) Enroll a high proportion (at least 40 percent) of federally connected children in ADA who reside on Indian lands or who reside on Federal property and have a parent on active duty in the U.S. uniformed services;

(iv) Have a school that enrolls a high proportion of one of these types of students;

(v) Meet the specific numeric requirements regarding bonding capacity; or

(vi) Be eligible for funding under section 8002 of the Act (payments for Federal property).

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of its need for modernization funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.172 What activities may an LEA conduct with funds received under this program?

(a) An LEA may use emergency grant funds received under this program only to repair, renovate, alter, and, in the limited circumstances described in paragraph (c) of this section replace a public elementary or secondary school facility used for free public education to ensure the health and safety of students and personnel, including providing accessibility for the disabled as part of a larger project.

(b) An LEA may use modernization grant funds received under this program only to renovate, alter, retrofit, extend, and, in the limited circumstances described in paragraph (c) of this section replace a public elementary or secondary school facility used for free public education to provide school facilities that support a contemporary educational program for the LEA's students at normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

(c)(1) An emergency or modernization grant under this program may be used for the construction of a new school facility but only if the Secretary determines—

(i) That the LEA holds title to the existing facility for which funding is requested; and

(ii) In consultation with the grantee, that partial or complete replacement of the facility would be less expensive or more cost-effective than improving the existing facility.

(2) When construction of new school facilities is permitted, emergency and modernization funds may be used only for new school facilities that are used for free public education. These may include the—

(i) Construction of instructional, resource, food service, and general or administrative support areas, so long as they are a part of the instructional facility; and

(ii) Purchase of initial equipment, machinery, and initial utility connections.

(Authority: 20 U.S.C. 7707(b))

§ 222.173 What activities are prohibited?

The Secretary does not fund the following activities under a Discretionary Construction grant:

(a) Improvements to facilities for which the LEA does not have full title or other interest.

(b) Improvements to or repairs of school grounds, such as environmental remediation, traffic remediation, and landscaping, that do not directly involve instructional facilities.

(c) Repair, renovation, alteration, or construction for stadiums or other facilities that are primarily used for athletic contests, exhibitions, and other events for which admission is charged to the general public.

(d) Improvements to or repairs of teacher housing.

(e) Except in the limited circumstances as provided in § 222.172(c), when new construction is permissible, acquisition of any interest in real property.

(f) Maintenance costs associated with any of an LEA's school facilities.

(Authority: 20 U.S.C. 7707(b))

§ 222.174 What other prohibitions apply to these funds?

Grant funds under this program may not be used to supplant or replace other available non-Federal construction money. These grant funds may be used for emergency or modernization activities only to the extent that they supplement the amount of construction funds that would, in the absence of these grant funds, be available to a grantee from non-Federal funds for these purposes.

Example of supplanting: An LEA signs a contract for a $300,000 roof replacement and plans to use its capital expenditure fund to pay for the renovation. Since the LEA already has non-Federal funds available for the roof project, it may not now use a grant from this program to pay for the project or replace its own funds in order to conserve its capital fund.

Example of non-supplanting: The LEA above that has the $300,000 roof commitment has also received a $400,000 estimate for the replacement of its facility's heating, ventilation, and air conditioning (HVAC) system. The LEA has not made any commitments for the HVAC system because it has no remaining funds available to pay for that work. Since other funds are not available, it would not be supplanting if the LEA received an emergency grant under this program to pay for the HVAC system.

(Authority: 20 U.S.C. 7707(b))

§ 222.175 What regulations apply to recipients of funds under this program?

The following regulations apply to the Impact Aid Discretionary Construction program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) except for 34 CFR through 75.617.

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in 34 CFR part 222.

(Authority: 20 U.S.C. 1221e–3)

§ 222.176 What definitions apply to this subpart?

(a) In addition to the terms referenced in 34 CFR § 222.2, the following definitions apply to this program:

Bond limit means the cap or limit that a State may impose on an LEA's capacity for bonded indebtedness. For applicants in States that place no limit on an LEA's capacity for bonded indebtedness, the Secretary shall consider the LEA's bond limit to be ten percent of its total assessed valuation.

Construction means (1) preparing drawings and specifications for school facilities; (2) repairing, renovating, or altering school facilities; (3) extending school facilities as described in § 222.172(b); (4) erecting or building school facilities, as described in § 222.172(c); and (5) inspections or supervision related to school facilities projects.

Emergency means a school facility condition that is so injurious or hazardous that it either poses an immediate threat to the health and safety of the facility's students and staff or can be reasonably expected to pose such a threat in the near future. These conditions can include deficiencies in the following building features: a roof; electrical wiring; a plumbing or sewage system; or heating, ventilation, or air conditioning; or the need to bring a school facility into compliance with fire and safety codes, or providing accessibility for the disabled as part of a larger project.

Level of bonded indebtedness means the amount of long-term debt issued by an LEA divided by the LEA's bonding capacity.

Minimal capacity to issue bonds means that the total assessed value of real property in an LEA that may be taxed for school purposes is at least $25,000,000 but not more than $50,000,000.

Modernization means the repair, renovation, alteration, or extension of a public elementary or secondary school facility in order to support a contemporary educational program for an LEA's students in normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

No practical capacity to issue bonds means that the total assessed value of real property in an LEA that may be taxed for school purposes is less than $25,000,000.

School facility means a building used to provide free public education, including instructional, resource, food service, and general or administrative support areas, so long as they are a part of the facility.

Total assessed value per student means the assessed valuation of real property per pupil (AVPP), unless otherwise defined by an LEA's State.

(Authority: 20 U.S.C. 7707(b))

(b) *Definitions in EDGAR.* The following terms used in this subpart are defined or referenced in 34 CFR 77.1:

Applicant
Application
Award
Contract
Department
EDGAR
Equipment
Fiscal year
Grant
Grantee
Project
Public
Real property
Recipient

(Authority: 20 U.S.C. 7707(b) and 1221e–3)

Eligibility

§ 222.177 What eligibility requirements must an LEA meet to apply for an emergency grant under the first priority?

An LEA is eligible to apply for an emergency grant under the first priority of section 8007(b) of the Act if it—

(a) Is eligible to receive formula construction funds for the fiscal year under section 8007(a) of the Act;

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least seventy-five percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act; and

(c) Has a school facility emergency that the Secretary has determined poses a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.178 What eligibility requirements must an LEA meet to apply for an emergency grant under the second priority?

Except as provided in § 222.179, an LEA is eligible to apply for an emergency grant under the second priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act;

(b)(1) Has federally connected children living on Indian lands equal to at least 40 percent of the total number of children in average daily attendance (ADA) in its schools; or

(2) Has federally connected children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools;

(c) Has used at least seventy-five percent of its bond limit;

(d) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(e) Has a school facility emergency that the Secretary has determined is a health or safety hazard to students and school personnel.

(Authority: 20 U.S.C. 7707(b))

§ 222.179 Under what circumstances may an ineligible LEA apply on behalf of a school for an emergency grant under the second priority?

An LEA that is eligible to receive section 8003(b) assistance for the fiscal year but that does not meet the other eligibility criteria described in § 222.178(a) or (b) may apply on behalf of a school located within its geographic boundaries for an emergency grant under the second priority of section 8007(b) of the Act if—

(a) The school—

(1) Has children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Has children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The school has a school facility emergency that the Secretary has determined is a health or safety hazard to students and school personnel;

(c) The LEA has used at least 75 percent of its bond limit; and

(d) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average.

(Authority: 20 U.S.C. 7707(b))

§ 222.180 What eligibility requirements must an LEA meet to apply for a modernization grant under the third priority?

An LEA is eligible to apply for a modernization grant under the third priority of section 8007(b) of the Act if it—

(a) Is eligible to receive funds for the fiscal year under section 8002 or 8003(b) of the Act;

(b)(1) Has no practical capacity to issue bonds;

(2) Has minimal capacity to issue bonds and has used at least 75 percent of its bond limit; or

(3) Is eligible to receive funds for the fiscal year for heavily impacted districts under section 8003(b)(2) of the Act; and

(c) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.181 What eligibility requirements must an LEA meet to apply for a modernization grant under the fourth priority?

An LEA is eligible to apply for a modernization grant under the fourth priority of section 8007(b) of the Act if it—

(a)(1) Is eligible to receive funds for the fiscal year under section 8003(b) of the Act; and

(i) Has children living on Indian lands equal to at least 40 percent of the total number of children in ADA in its schools; or

(ii) Has children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA in its schools; or

(2) Is eligible to receive assistance for the fiscal year under section 8002 of the Act;

(b) Has used at least 75 percent of its bond limit;

(c) Has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(d) Has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

§ 222.182 Under what circumstances may an ineligible LEA apply on behalf of a school for a modernization grant under the fourth priority?

An LEA that is eligible to receive a payment under Title VIII for the fiscal year but that does not meet the other eligibility criteria described in § 222.181 may apply on behalf of a school located within its geographic boundaries for a modernization grant under the fourth priority of section 8007(b) of the Act if—

(a) The school—

(1) Has children living on Indian lands equal to at least 40 percent of the total number of children in ADA; or

(2) Has children with a parent in the U.S. uniformed services equal to at least 40 percent of the total number of children in ADA;

(b) The LEA has used at least 75 percent of its bond limit;

(c) The LEA has an average per-student assessed value of real property available to be taxed for school purposes that is below its State average; and

(d) The school has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of Federal property, or an increase in enrollment due to expanded Federal activities, housing privatization, or the acquisition of Federal property.

(Authority: 20 U.S.C. 7707(b))

How To Apply for a Grant

§ 222.183 How does an LEA apply for a grant?

(a) To apply for funds under this program, an LEA may submit more than one application in a fiscal year.

Examples: 1. An LEA wants to receive both an emergency and a modernization grant for one school that has a failing roof and that also needs significant classroom modernization. The LEA would submit an emergency repair grant application to address the roof issues and a separate modernization application to request funds to renovate classroom space.

2. An LEA has five schools and seeks emergency grants to replace a roof and a boiler in one school and to replace windows in a second school. It should submit two applications—one for each of the two school facilities.

3. An LEA has one school that has several conditions that need to be corrected—a failing roof, aging windows that impair the efficiency of the heating system, and asbestos in floor tiles. The LEA may submit a single application for all of these conditions or separate emergency repair grant applications for each condition, if the LEA judges that they present varying degrees of urgency.

(b) An application must—

(1) Contain the information required in §§ 222.184 through 222.186, as applicable, and in any application notice that the Secretary may publish in the **Federal Register;** and

(2) Be timely filed in accordance with the provisions of the Secretary's application notice.

(Authority: 20 U.S.C. 7707(b))

§ 222.184 What information must an application contain?

An application for an emergency or modernization grant must contain the following information:

(a) The name of the school facility the LEA is proposing to repair, construct, or modernize.

(b)(1) For an applicant under section 8003(b) of the Act, the number of federally connected children described in section 8003(a)(1) enrolled in the school facility, as well as the total enrollment in the facility, for which the LEA is seeking a grant; or

(2) For an applicant under section 8002 of the Act, the total enrollment (based on the fall State count date) for the preceding year in the LEA and in the school facility for which the LEA is seeking a grant.

(c) An identification of the LEA's interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.

(d) The original construction date of the school facility that the LEA proposes to renovate or modernize.

(e) The dates of any major renovations of that school facility and the areas of the school covered by the renovations.

(f) The proportion of Federal acreage within the geographic boundaries of the LEA.

(g) Fiscal data including the LEA's—

(1) Maximum bonding capacity;

(2) Amount of bonded debt;

(3) Total assessed value of real property for school purposes;

(4) State average assessed value per pupil of real property that was taxed for school purposes;

(5) Local real property tax levy, in mills or dollars, that was used for capital expenditures; and

(6) Sources of funds available for the proposed project.

(h) A description of the need for funds and the proposed project for which a grant under this subpart would be used, including a cost estimate for the project.

(i) Applicable assurances and certifications identified in the approved grant application package.

(Authority: 20 U.S.C. 7707(b))

§ 222.185 What additional information must be included in an emergency grant application?

In addition to the information specified in § 222.184, an application for an emergency grant must contain the following:

(a) A description of the deficiency that poses a health or safety hazard to occupants of the facility.

(b) A description of how the deficiency adversely affects the occupants and how it will be repaired.

(c) A statement signed by an appropriate local official, as defined below, that the deficiency threatens the health and safety of occupants of the facility or prevents the use of the facility. An appropriate local official may include a local building inspector, a licensed architect, or a licensed structural engineer. An appropriate local official may not include a staff person of the applicant LEA.

(Authority: 20 U.S.C. 7707 (b))

§ 222.186 What additional information must be included in a modernization grant application?

In addition to the information specified in § 222.184, an application for a modernization grant must contain a description of—

(a) The need for modernization; and

(b) How the applicant will use funds received under this program to address the need referenced in paragraph a of this section.

(Authority: 20 U.S.C. 7707(b))

§ 222.187 Which year's data must an SEA or LEA provide?

(a) Except as provided in paragraph (b) of this section, the Secretary will determine eligibility under this Discretionary Program based on student and fiscal data for each LEA from the fiscal year preceding the fiscal year for which the applicant is applying for funds.

(b) If satisfactory fiscal data are not available from the preceding fiscal year, the Secretary will use data from the most recent fiscal year for which data

that are satisfactory to the Secretary are available.

(Authority: 20 U.S.C. 7707(b))

How Grants Are Made

§ 222.188 What priorities may the Secretary establish?

In any given year, the Secretary may assign extra weight for certain facilities systems or emergency and modernization conditions by identifying the systems or conditions and their assigned weights in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 7707(b))

§ 222.189 What funding priority does the Secretary give to applications?

(a) Except as provided in paragraph (b) of this section, the Secretary gives funding priority to applications in the following order:

(1) First priority is given to applications described under § 222.177 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(2) After all eligible first-priority applications are funded, second priority is given to applications described under §§ 222.178 and 222.179 and, among those applicants for emergency grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the emergency.

(3) Third priority is given to applications described under § 222.180 and, among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(4) Fourth priority is given to applications described under §§ 222.181 and 222.182 and, among those applicants for modernization grants, priority is given to applications based on a rank order of the application quality factors referenced in § 222.190, including the severity of the need for modernization.

(b)(1) The Secretary makes awards in each priority described above until the Secretary is unable to make an approvable award in that priority.

(2) If the Secretary is unable to fund a full project or a viable portion of a project, the Secretary may continue to fund down the list of high-ranking applicants within a priority.

(3) The Secretary applies any remaining funds to awards in the next priority.

(4) If an applicant does not receive an emergency or modernization grant in a fiscal year, the Secretary will, subject to the availability of funds and to the priority and award criteria, consider that application in the following year along with the next fiscal year's pool of applications.

Example: The first five applicants in priority one have been funded. Three hundred thousand dollars remain available. Three unfunded applications remain in that priority. Application #6 requires a minimum of $500,000, application #7 requires $400,000, and application #8 requires $300,000 for a new roof and $150,000 for related wall and ceiling repairs. Applicant #8 agrees to accept the remaining $300,000 since the roof upgrade can be separated into a viable portion of applicant #8's total project. Applications #6 and #7 will be retained for consideration in the next fiscal year and will compete again with that fiscal year's pool of applicants. Applicant #8 will have to submit a new application in the next fiscal year if it wishes to be considered for the unfunded portion of the current year's application.

(Authority: 20 U.S.C. 7707(b))

§ 222.190 How does the Secretary rank and select applicants?

(a) To the extent consistent with these regulations and section 8007(b) of the Act, the Secretary will follow grant selection procedures that are specified in 34 CFR 75.215 through 75.222. In general these procedures are based on the authorizing statute, the selection criteria, and any priorities or other applicable requirements that have been published in the **Federal Register**.

(b) In the event of ties in numeric ranking, the Secretary may consider as tie-breaking factors: The severity of the emergency or the need for modernization; for applicants under section 8003 of the Act, the numbers of federally connected children who will benefit from the project; or for applicants under section 8002 of the Act, the numbers of children who will benefit from the project; the AVPP compared to the LEA's State average; and available resources or non-Federal funds available for the grant project.

(Authority: 20 U.S.C. 7707(b))

§ 222.191 What is the maximum award amount?

(a) Subject to any applicable contribution requirements as described in §§ 222.192 and 222.193, the procedures in §§ 75.231 through 75.236, and the provisions in paragraph (b) of this section, the Secretary may fund up to 100 percent of the allowable costs in an approved grantee's proposed project.

(b) An award amount may not exceed the difference between—

(1) The cost of the proposed project; and

(2) The amount the grantee has available or will have available for this purpose from other sources, including local, State, and other Federal funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.192 What local funds may be considered as available for this project?

To determine the amount of local funds that an LEA has available under § 222.191(b)(2) for a project under this program, the Secretary will consider as available all LEA funds that may be used for capital expenditures except $100,000 or ten percent of the average annual capital expenditures of the applicant for the three previous fiscal years, whichever is greater.

(Authority: 20 U.S.C. 7707(b))

§ 222.193 What other limitations on grant amounts apply?

(a) Except as provided in paragraph (b) of this section and § 222.191, the amount of funds provided under an emergency grant or a modernization grant awarded under this subsection to an eligible LEA is subject to the following limitations:

(1) The award amount may not be more than 50 percent of the total cost of an approved project.

(2) The total amount of grant funds may not exceed four million dollars during any four-year period.

Example: An LEA that is awarded $4 million dollars in the first year may not receive any additional funds for the following three years.

(b) Emergency or modernization grants to LEAs with no practical capacity to issue bonds as defined in § 222.176 are not subject to the award limitations described in paragraph (a) of this section.

(Authority: 20 U.S.C. 7707(b))

§ 222.194 Are "in-kind" contributions permissible?

(a) LEAs that are subject to the applicable matching requirement described in § 222.193(a) may use allowable third party in-kind contributions as defined below to meet the requirements.

(b) Third party in-kind contributions mean property or services that benefit this grant program and are contributed by non-Federal third parties without charge to the grantee or by a cost-type contractor under the grant agreement.

(c) The provisions of 34 CFR 80.24 govern the allowability and valuation of in-kind contributions, except that it is permissible for a third party to contribute real property to a grantee for

a project under this program, so long as no Federal funds are spent for the acquisition of real property.

(Authority: 20 U.S.C. 7707(b))

Conditions and Requirements Grantees Must Meet

§ 222.195 How does the Secretary make funds available to grantees?

The Secretary makes funds available to a grantee during a project period using the following procedure:

(a) Upon final approval of the grant proposal, the Secretary authorizes a project period of up to 60 months based upon the nature of the grant proposal and the time needed to complete the project.

(b) The Secretary then initially makes available to the grantee 10 percent of the total award amount.

(c) After the grantee submits a copy of the emergency or modernization contract approved by the grantee's governing board, the Secretary makes available 80 percent of the total award amount to a grantee.

(d) The Secretary makes available up to the remaining 10 percent of the total award amount to the grantee after the grantee submits a statement that—

(1) Details any earnings, savings, or interest;

(2) Certifies that—

(i) The project is fully completed; and

(ii) All the awarded funds have been spent for grant purposes; and

(3) Is signed by the—

(i) Chairperson of the governing board;

(ii) Superintendent of schools; and

(iii) Architect of the project.

(Authority: 20 U.S.C. 7707(b))

§ 222.196 What additional construction and legal requirements apply?

(a) Except as provided in paragraph (b) of this section, a grantee under this program must comply with—

(1) The general construction legal requirements identified in the grant application assurances;

(2) The prevailing wage standards in the grantee's locality that are established by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a, *et seq.*); and

(3) All relevant Federal, State, and local environmental laws and regulations.

(b) A grantee that qualifies for a grant because it enrolls a high proportion of federally connected children who reside on Indian lands is considered to receive a grant award primarily for the benefit of Indians and must therefore comply with the Indian preference requirements of section 7(b) of the Indian Self-Determination Act.

(Authority: 20 U.S.C. 7707(b) and 1221e–3)

[FR Doc. 03–26650 Filed 10–21–03; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday,
October 22, 2003

Part VI

Department of Education

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2004; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.305G, 84.305H, 84.305K, 84.305M, and 84.305E]

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2004

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces five FY 2004 competitions for grants to support education research. The Director takes this action under the Education Sciences Reform Act of 2002 (Act), Title I of Pub. L. 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary study.

SUPPLEMENTARY INFORMATION:

Mission of Institute: A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about education practices that support learning and improve academic achievement and access to education opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in this notice: The Institute currently plans to support the following competitions in FY 2004:

- Reading Comprehension and Reading Scale-up Research;
- Cognition and Student Learning Research;
- Mathematics and Science Education Research;
- Teacher Quality Research; and
- Research on Education Finance, Leadership, and Management.

Additional competitions for FY 2004 may be announced later.

Eligible Applicants: Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

Request for Applications and Other Information: Information regarding program and application requirements for each of the Institute's competitions is contained in the applicable Request for Applications package (RFA), which will be available at the following Web site: *http://www.ed.gov/programs/edresearch/applicant.html.*

The RFAs will be available—

(1) On or before *October 22, 2003,* for Cognition and Student Learning Research; Mathematics and Science Education Research; Teacher Quality Research; and Reading Comprehension and Reading Scale-up Research; and

(2) On or before *November 14, 2003,* for Research on Education Finance, Leadership and Management.

Interested potential applicants should periodically check the Institute's Web site.

Information regarding selection criteria and review procedures will also be posted at this Web site.

Fiscal Information: Although Congress has not enacted a final appropriation for FY 2004, the Institute is inviting applications for these competitions now so that it may be prepared to make awards following final action on the Department's appropriation bill. The President's Budget for the Institute for FY 2004 includes sufficient funding for all of the competitions included in this notice. The actual award of grants is pending the availability of funds.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 85, 86 (part 86 applies only to Institutions of Higher Education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220 and 75.230.

Performance Measures

To evaluate the overall success of its education research program, the Institute of Education Sciences annually assesses the quality and relevance of newly funded research projects, as well as the quality of research publications that result from its funded research projects. Two indicators address the quality of new projects. First, an external panel of eminent senior scientists reviews the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality is determined. Second, because much of the Institute's work focuses on questions of effectiveness, newly funded applications are evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators reviews descriptions of a randomly selected sample of newly funded projects and rates the degree to which the projects are relevant to educational practice.

Two indicators address the quality of new research publications, both print and web-based, which are the products of funded research projects. First, an external panel of eminent scientists reviews the quality of a randomly selected sample of new publications, and the percentage of new publications that are deemed to be of high quality is determined. Second, publications that address causal questions are identified, and are then reviewed to determine the percentage that employ randomized experimental designs. As funded research projects are completed, the Institute will subject the final reports to similar reviews.

To evaluate impact, the Institute surveys a random sample of K–16 policymakers and administrators once every 3 years to determine the percentage who report routinely considering evidence of effectiveness before adopting educational products and approaches.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2004 competitions be submitted electronically to the following Web site: *http://ies.constellagroup.com.*

Information on the software to be used in submitting applications will be available at the same Web site.

FOR FURTHER INFORMATION CONTACT: The contact person and the deadline for receipt of applications associated with a particular program of research is listed in the following chart and in the RFA that will be posted at: *http://www.ed.gov/programs/edresearch/applicant.html.*

CFDA number and program of research	Deadline for receipt of applications	For further information contact
84.305G Reading Comprehension and Reading Scale-up Research.	January 8, 2004	Elizabeth Albro, E-mail: *elizabeth.albro@ed.gov.*
84.305H Cognition and Student Learning Research.	January 8, 2004	Elizabeth Albro, E-mail: *elizabeth.albro@ed.gov.*
84.305K Mathematics and Science Education Research.	January 8, 2004	Heidi Schweingruber—E-mail: *heidi.schweingruber@ed.gov.*
84.305M Teacher Quality Research	January 8, 2004	Harold Himmelfarb—E-mail: *harold.himmelfarb@ed.gov.*
84.305E Research on Education Finance, Leadership, and Management.	February 5, 2004	Jon Oberg—E-mail: *jon.oberg@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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 program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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.*

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Program Authority: 20 U.S.C. 9501 *et seq.* (the ''Education Sciences Reform Act of 2002'', Title 1 of Public Law 107–279, November 5, 2002).

Dated: October 17, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–26656 Filed 10–21–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
October 22, 2003

Part VII

The President

Proclamation 7723—National Forest Products Week, 2003

Proclamation 7724—National Character Counts Week, 2003

Federal Register
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Wednesday, October 22, 2003

Presidential Documents

Title 3—

The President

Proclamation 7723 of October 17, 2003

National Forest Products Week, 2003

By the President of the United States of America

A Proclamation

Our forests are a source of pride for our Nation. They benefit many Americans who depend on healthy forests for their livelihoods and quality of life. As we celebrate National Forest Products Week, we recognize the importance of our forest resources. We remain committed to sound, commonsense, forest management.

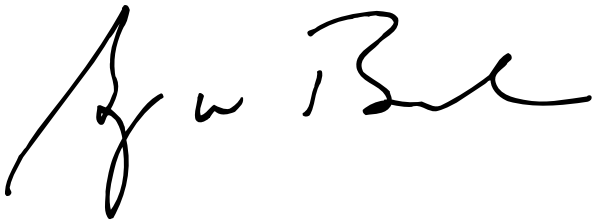
Beyond their scenic beauty, our forests are vital to our economy and our way of life. Numerous jobs in the manufacturing and construction industries, as well as in the forest products industries, rely on the health and sustainability of our forests. Forests provide lumber for building our homes, they provide paper for publishing our books and newspapers, and forests are the source of many other wood and paper products that Americans use every day.

We have a responsibility to maintain the health and productivity of our forests. In the past, forests have been spoiled by overgrowth, decimated by insects and disease, and devastated by wildfires. My Administration's Healthy Forests Initiative will help prevent this kind of destruction. Aided by this Initiative, we treated nearly 2.6 million acres of forests during the last fiscal year to reduce dangerous overgrowth and restore forest health. This is more than double the number of acres that were treated 3 years ago. My Administration is also committed to fulfilling the promise of the 1994 Northwest Forest Plan to protect our most sensitive forest areas, while supporting a viable forest products industry and jobs in rural America. By encouraging active forest management and sustainable timber harvesting, we strengthen our economy and ensure the lasting beauty of our woodlands.

Recognizing the importance of our forests in ensuring the long-term welfare of our Nation, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 19 through October 25, 2003, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–26830
Filed 10–21–03; 9:20 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7724 of October 18, 2003

National Character Counts Week, 2003

By the President of the United States of America

A Proclamation

Many of our society's most cherished values, such as equal treatment for fellow citizens and respect for the law, depend in practice on individual character. During National Character Counts Week, we recognize the importance that good character has played in our history, celebrate the great character exhibited by our citizens, and reaffirm our commitment to promoting the values that will ensure a better future for all.

Throughout history, we see numerous examples of character in action. Great social reformers like Harriet Tubman, Frederick Douglass, and Susan B. Anthony demonstrated courage and resolve when they stood firm in the face of injustice and acted to right societal wrongs. Similarly, leaders like Abraham Lincoln and Franklin Roosevelt, were able to guide our Nation through critical periods because of their strong personal convictions and sense of moral clarity. Today, these and other heroes of history inspire us to pursue virtue and character in our own lives.

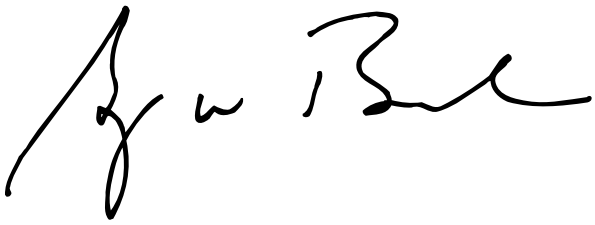
Since the terrorist attacks of September 11, 2001, we have seen the great character of our Nation in the hearts and souls of our citizens and soldiers, and in countless acts of kindness, generosity, and sacrifice. To sustain this spirit and continue to improve our society, we must promote a culture of service, citizenship, and responsibility in our Nation. Through the USA Freedom Corps, my Administration is offering opportunities for citizens to give back to their communities, helping millions of Americans meet vital needs as active and engaged citizens in our democratic society.

The development of character and citizenship has always been a primary goal of America's schools. Today, it is more important than ever that we educate our young people to be knowledgeable, compassionate, and involved citizens of a free society. Since 2002, 47 State education agencies and local school districts have received grants to implement character education programs. These grants help schools work with students, parents, and community organizations to effectively teach universal values such as respect, honesty, and tolerance.

This week, I urge all Americans to join me in promoting good character in America. By teaching these values to our children and living by these values in our own lives, we can build a future of hope, compassion, and opportunity for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 19 through October 25, 2003, as National Character Counts Week. I call upon public officials, educators, librarians, parents, students, and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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Filed 10–21–03; 9:20 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2152/P.L. 108–99

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

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