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RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 72, No. 43

Tuesday, March 6, 2007

Agricultural Marketing Service
RULES
Walnuts grown in California, 9841–9843
PROPOSED RULES
National Organic Program:
Allowed and prohibited substances; national list, 9872–9877
NOTICES
Cotton research and promotion order:
Cotton Research and Promotion Act; referendum determination, 9918–9919

Agriculture Department
See Agricultural Marketing Service

Army Department
See Engineers Corps
NOTICES
Meetings:
Army Educational Advisory Committee, 9933

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9920–9921

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9949–9950
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 9950–9951
Correction, 9950

Coast Guard
RULES
Drawbridge operations:
California, 9854–9855
PROPOSED RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Sacramento River, CA, 9901–9903

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9919–9920

Commission of Fine Arts
NOTICES
Meetings, 9933

Customs and Border Protection Bureau
RULES
Merchandise, special classes:
Cement products from Mexico requiring Commerce Department import license, 10004–10006

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Drug Enforcement Administration
NOTICES
Registration revocations, restrictions, denials, reinstatements:
ATF Fitness Products, Inc., 9967–9969
Georgia Convenience Wholesale, Inc., 9969–9971
MK Distributing, Inc., 9972–9974
Applications, hearings, determinations, etc.:
Varian, Inc., 9967

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Centers for Independent Living Program, 9936–9938
Rehabilitation Continuing Education Programs-Community Rehabilitation Programs, 9939–9942
Special education and rehabilitative services:
Rehabilitation Services Administration Rehabilitation Training Program; redesign; comments and recommendations request, 9942–9943

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9974–9977

Energy Department
NOTICES
Privacy Act; systems of records, 9943–9947

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Lorain Harbor, OH; dredged material management plan, 9934–9935

Environmental Protection Agency
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Electric utility steam generating units and industrial-commercial-institutional steam generating units, 9903
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
Beaver Wood Product Site, MT, 9947–9948
Star Lake Canal Site, TX, 9948

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 9948

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Special flight rules area informational map; obsolete reference removed, 9845–9846
Airworthiness directives:
Fokker, 9843–9845
Standard instrument approach procedures, 9846–9847
PROPOSED RULES
Airworthiness directives:
Airbus, 9880–9884
Boeing, 9877–9880
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 9995

Federal Motor Carrier Safety Administration
RULES
Motor carrier safety standards:
Parts and accessories necessary for safe operation—
Surge brake requirements, 9855–9871
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9995–9996
Reports and guidance documents; availability, etc.:
Oregon Department of Transportation; weight-mile tax display requirement for interstate motor carriers; petition denied, 9996–9999
Surge brakes use on commercial motor vehicles; regulatory guidance withdrawn, 9999

Federal Railroad Administration
PROPOSED RULES
Railroad locomotive safety standards:
Sanders; addition use, 9904–9912

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 9948–9949

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Indiana bat, 9913–9917
Virginia northern flying squirrel; delisting
Correction, 9913

Food and Drug Administration
RULES
Human drugs:
Dandruff, seborrheic dermatitis, and psoriasis drug products (OTC); final monograph amendment, 9849–9852
NOTICES
Reports and guidance documents; availability, etc.:
Orally inhaled and intranasal corticosteroids; evaluation of effects on growth in children, 9951–9952

Government Printing Office
NOTICES
Meetings:
Depository Library Council to the Public Printer, 9949

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Human Research Protections Advisory Committee, 9949

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9953–9954
Immigration and Nationality Act; Secretarial determination, 9954–9958
Meetings:
Data Privacy and Integrity Advisory Committee, 9958–9959
Memorandums of understanding:
NRC and Homeland Security Department; location of new utilization facilities; potential vulnerabilities, 9959–9960

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9960–9961
Grants and cooperative agreements; availability, etc.:
Community Development Block Grant Program—
Disaster recovery grants provided to States; waivers and alternative requirements, 10014–10018, 10020–10022
Low income housing:
Difficult development areas and qualified census tracts; statutorily mandated designation for tax credit; effective date definition revised, 9961–9963

Industry and Security Bureau
RULES
Export administration regulations:
Crime control items; license exception availability, license requirements, and licensing policy; revisions and clarifications, 9847–9849

Interior Department
See Fish and Wildlife Service
See Minerals Management Service
See Reclamation Bureau

International Trade Administration
RULES
Mexican Cement Import Licensing System, 10006–10011
NOTICES
Antidumping:
Canned pineapple fruit from—
Thailand, 9921–9922
Carbon and alloy steel wire rod from—
Trinidad and Tobago, 9922–9924
Oil country tubular goods, other than drill pipe, from—
Korea, 9924–9926
Sodium hexametaphosphate from—
China, 9926–9930

Solid urea from—
Russia, 9930–9931

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment Standards Administration

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Oil and gas production requirements, 9884–9901

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9977–9979

National Highway Traffic Safety Administration
NOTICES
Meetings:
New Car Assessment Program; suggested approaches for enhancements; hearing; correction, 9999
Motor vehicle safety standards; exemption petitions, etc.:
J.K. Technologies, LLC, 9999–10001

National Institute of Standards and Technology
NOTICES
Meetings:
Manufacturing Extension Partnership National Advisory Board, 9931

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico and South Atlantic gag grouper and Gulf of Mexico red grouper; SEDAR workshops, 9931–9932

Navy Department
NOTICES
Base realignment and closure:
Surplus Federal property—
Naval Station Pascagoula, MS, 9935–9936
Naval Weapons Station Seal Beach Detachment, Concord, CA, 9935

Nuclear Regulatory Commission
NOTICES
Generic letters:
Inaccessible or underground power cable failures that disable accident mitigation systems or cause plant transients, 9979–9980
Meetings:
Nuclear Waste Advisory Committee, 9980–9981
Meetings; Sunshine Act, 9981–9982
Memorandums of understanding:
NRC and Homeland Security Department; location of new utilization facilities; potential vulnerabilities, 9959–9960
Petitions; Director's decisions:
STP Nuclear Operating Co., 9982–9983

Patent and Trademark Office
NOTICES
Organization, functions, and authority delegations:
Trademark Search Facility, Arlington, VA; paper search collection of registered word-only marks removed, 9932–9933

Postal Service
NOTICES
Meetings; Sunshine Act, 9983

Presidential Documents
PROCLAMATIONS
Dominican Republic; free trade agreement (Proc. 8111), 10023–10028
Northwestern Hawaiian Islands Marine National Monument; amendment to Proclamation 8031 (Proc. 8112), 10029–10031

Reclamation Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9964–9967

Securities and Exchange Commission
NOTICES
Securities Exchange Act:
International Securities Exchange, LLC and National Association of Securities Dealers, Inc.; regulatory responsibilities allocation plan, 9983–9985
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange LLC, 9985–9989

Small Business Administration
NOTICES
Meetings:
National Small Business Development Center Advisory Board, 9989

State Department
RULES
Intercounty Adoption Act of 2000:
Hague Convention—
Emigrating children; convention and nonconvention adoptions; reporting requirements, 9852–9854
NOTICES
Grants and cooperative agreements; availability, etc.:
Faith and Community: A Dialogue, 9990–9995

Substance Abuse and Mental Health Services Administration

NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 9952–9953

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
RULES
Merchandise, special classes:
Cement products from Mexico requiring Commerce Department import license, 10004–10006

Separate Parts In This Issue

Part II
Commerce Department, International Trade Administration, 10006–10011
Homeland Security Department, Customs and Border Protection Bureau; Treasury Department, 10004–10006

Part III
Housing and Urban Development Department, 10014–10018

Part IV
Housing and Urban Development Department, 10020–10022

Part V
Executive Office of the President, Presidential Documents, 10023–10028

Part VI
Executive Office of the President, Presidential Documents, 10029–10031

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

6641 (See Proclamation 8111) 10025

8031 (Amended by Proclamation 8112) 10031

8111 10025

8112 10031

Executive Orders:

11651 (See Proclamation 8111) 10025

7 CFR

984 9841

Proposed Rules:

205 9872

14 CFR

39 9843

91 9845

97 9846

Proposed Rules:

39 (2 documents) 9877, 9880

15 CFR

740 9847

742 9847

774 9847

19 CFR

12 10004

163 10004

361 10004

21 CFR

310 9849

358 9849

22 CFR

99 9852

30 CFR

Proposed Rules:

250 9884

33 CFR

117 (2 documents) 9854, 9855

Proposed Rules:

165 9901

40 CFR

Proposed Rules:

60 9903

49 CFR

393 9855

Proposed Rules:

229 9904

50 CFR

Proposed Rules:

17 (2 documents) 9913

Federal Register

Tuesday,
March 6, 2007

Part II

Department of Homeland Security

Bureau of Customs and Border Protection

Department of the Treasury

Department of Commerce

International Trade Administration

19 CFR Parts 12, 163, and 361

Entry of Certain Cement Products From Mexico Requiring a Commerce Department Import License and Mexican Cement Import Licensing System; Final Rules

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12 and 163

[CBP Dec. 07–05 and USCBP–2006–0020]

RIN 1505–AB68

Entry of Certain Cement Products From Mexico Requiring a Commerce Department Import License

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations (19 CFR) to set forth special requirements for the entry of certain cement products from Mexico requiring a United States Department of Commerce import license. The cement products in question are those listed in the Agreement on Trade in Cement, entered into between the Office of the United States Trade Representative, the United States Department of Commerce, and Mexico's Secretaria de Economia, on March 6, 2006. The changes implemented by this document require an importer to submit to Customs and Border Protection (CBP) an import license number on the entry summary (CBP Form 7501) or on the application for foreign trade zone (FTZ) admission and/or status designation (CBP Form 214), for any cement product for which the United States Department of Commerce requires an import license under its cement licensing and import monitoring program. Additionally, an importer must submit a hard copy of the original valid Mexican export license with the entry documentation or provide such document to the FTZ operator, unless directed otherwise by CBP.

EFFECTIVE DATE: April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Alice Buchanan, Office of International Trade, Tel: (202) 344–2697.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2006, the Office of the United States Trade Representative (USTR), the United States Department of Commerce (Commerce), and the Ministry of Economy of the United Mexican States (Secretaria de Economia) signed a bilateral Trade in Cement Agreement (Agreement) concerning trade in cement between the United States and Mexico. The Agreement applies only to cement from Mexico as defined in Section I.L. of the Agreement. A copy of the Agreement is available on the Commerce Web site: *http://www.ia.ita.doc.gov/download/mexico-cement/cement-final-agreement.pdf*. The Agreement requires the creation of an Export Licensing Program by Mexico and an Import Licensing Program by Commerce to enforce certain quantitative restrictions contained in the Agreement.

On May 31, 2006, the International Trade Administration of the Department of Commerce published a document in the **Federal Register** (71 FR 30836) proposing a rule, set forth at §§ 360.201 through 360.205 of the Code of Federal Regulations (19 CFR 360.201 through 306.205) (changed to §§ 361.101 through 361.105 in ITA's final rule), that would establish a cement licensing and import monitoring program as directed under the terms of the Agreement. Although Commerce was vested with primary responsibility for the Mexican Cement import licensing and monitoring procedures, the Secretary of the Treasury, through the Bureau of Customs and Border Protection (CBP), is primarily responsible for the promulgation and administration of regulations regarding the importation and entry of merchandise into the United States. Accordingly, in conjunction with the Department of Commerce, on June 1, 2006, CBP published in the **Federal Register** (71 FR 31125) a proposal to add a new § 12.155 to title 19 of the CFR (19 CFR 12.155) which requires the inclusion of a cement import license number on the entry summary (CBP Form 7501) or the application for admission to a FTZ (CBP Form 214), and the submission of a valid Mexican export license with the entry summary documentation, in any case in which a cement import license is required to be obtained under the Commerce regulations. It was proposed that the entry (unless otherwise directed by CBP) must be a paper filing, and the license number must be included: on the entry summary (CBP Form 7501), at the time of filing, in the case of merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States; or, on CBP Form 214, at the time of filing under part 146 of this chapter, in the case of merchandise admitted into a foreign trade zone.

Comments were solicited on the proposal.

Discussion of Comments

Two comments were received in response to the solicitation of public comment in 71 FR 31125. A description of the comments received, together with CBP's analyses, is set forth below.

Comment

Two commenters inquired as to where on the CBP Form 7501 the import license number should be identified.

CBP Response

The import license number must be reported in column 33 of the newly reformatted CBP Form 7501 (or column 34 of the previous version of the CBP Form 7501, which remains valid). If the entry summary requires more than one cement import license, each license number must be reported within the column on the line item covering the subject cement. On the CBP Form 214, the import license number must be reported in box 16. If the CBP Form 214 is submitted in an electronic format (CBP Form e-214), the import license number must be reported as per instructions provided to the trade and made available for public viewing at *http://www.cbp.gov/*.

Comment

One commenter inquired as to how long an importer must maintain copies of the import license, and in what format the records must be maintained (*i.e.*, hard copy or electronic), in order to comply with CBP regulations.

CBP Response

Copies of Mexican Cement Import Licenses must be retained pursuant to the provisions set forth in part 163 of title 19 of the CFR. Section 163.4 (19 CFR 163.4) prescribes a record retention period of 5 years from the date of entry. Section 163.5 (19 CFR 163.5) prescribes methods for the storage of records. Specifically, § 163.5(a) states that persons required to maintain records (as per § 163.2) must retain the original, whether paper or electronic, for the prescribed retention period. The term ''original,'' when used in the context of the maintenance of records, is defined in § 163.1(h) (19 CFR 163.1(h)) as pertaining to records that are ''in the condition in which they were made or received.'' The import license numbers at issue are to be generated via an automated Mexican Cement Import Licensing System (for a complete description, see 71 FR 30837, dated May 31, 2006), which provides a single opportunity to print the electronically generated import license number. For security reasons, the system does not allow users to retrieve previously issued

licenses from the license system. Accordingly, the original hard copy print-out of the Mexican Cement Import License must be retained for the 5 year retention period.

Department of Commerce Final Regulations

In another document published in today's edition of the **Federal Register**, the Department of Commerce has finalized its proposal of May 31, 2006.

Conclusion

In conjunction with the final regulations adopted by the Department of Commerce, CBP, after analysis of the comments received in response to CBP's proposed rule and upon further consideration, has determined to adopt as a final rule the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (71 FR 31125) on June 1, 2006 with modifications as set forth below.

In the final rule, CBP will permit importers to report the import license number on either a paper or electronic version of the application for admission to a FTZ (CBP Form 214/e-214). This change from the proposal is being made to reflect that certain CBP ports are currently accepting electronic versions of the application for FTZ admission and/or status designation (CBP Form e-214) in lieu of paper copies. Paper copies of the CBP Form 214 will still be accepted; however, CBP is urging all members of the trade community to file electronic versions of the CBP Form e-214 where possible. Existing operational ports are listed at the CBP Web site located at *http://www.cbp.gov/*. The site will be updated to reflect new CBP Form e-214 operational ports. Any questions regarding the CBP Form e-214 admission should be directed to the local CBP Port Director.

Section 12.55 is restructured in this final rule to present a more logical organization. The recordkeeping provision in paragraph (c) is retitled as ''Import license information'' in the final rule. Paragraph (d), entitled, ''Export license information,'' now includes a reference to recordkeeping requirements relevant to export licenses.

The language of § 12.155(d) in the proposed rule is changed in the final rule to clarify that importers of Mexican cement must submit an original, physical copy of a valid Mexican export license to CBP with the entry summary documentation, unless otherwise directed by CBP. This language is added in the event CBP is able to process these types of entries electronically in the future. This provision is also changed in the final rule to clarify that the original physical copy of a valid Mexican export license must be provided to the FTZ operator with the CBP Form 214 in the case of a FTZ admission (unless otherwise directed by CBP) and, in such case, upon withdrawal from the FTZ no paper export license will be required to be submitted to CBP with the merchandise's subsequent entry summary documentation. Similarly, the language in proposed § 12.155(b)(1) is changed in the final rule to clarify that no import license will be required on the CBP Form 7501 for Mexican cement that was previously admitted to a FTZ and for which an import license number was already provided to CBP on the CBP Form 214.

The ''List of Records Required for the Entry of Merchandise'' set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) is also amended by this document to reflect the entry document requirements mandated by the Agreement. This document amends section IV of the Appendix by adding a new § 12.155 that lists the Mexican Cement export license and import license as new entry records.

The Regulatory Flexibility Act

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. The amendment, which involves the addition of one data element, at the time of entry, to either one of two existing required CBP forms and a submission of a Mexican export license, as required by the Agreement and the Department of Commerce regulations, will have a negligible impact on importer operations. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

■ For the reasons stated above, parts 12 and 163 of title 19 of the Code of Federal Regulations (19 CFR part 12) are amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

■ 2. A new center heading and new § 12.155 are added to read as follows:

Mexican Cement Products

§ 12.155 Entry or admission of Mexican cement products.

(a) *In general.* On March 6, 2006, the United States Trade Representative, United States Department of Commerce and Mexico's Secretaria de Economia entered into an ''Agreement on Trade in Cement'' (Agreement). Pursuant to the Agreement, the United States Department of Commerce will administer an import licensing system that covers imports of Mexican cement as defined in section I.L. of the Agreement. The Secretary of the Treasury, through the Bureau of Customs and Border Protection (CBP), is responsible for the promulgation and administration of regulations regarding the entry of the subject merchandise into the United States. The Agreement will terminate on March 31, 2009, unless it has been terminated prior to that date.

(b) *Reporting the import license number.* For every entry of merchandise for which a Mexican cement import license is required to be obtained under regulations promulgated by the U.S. Department of Commerce, set forth at 19 CFR 361.101 through 361.205, the entry (unless otherwise directed by CBP) must be a paper filing and the license number must be included:

(1) On the entry summary, at the time of filing, in the case of merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States, except for Mexican cement that was previously admitted to a FTZ and for which an import license number was already provided to CBP on the CBP Form 214. If the entry summary requires more than one cement import

license, each license number must be reported within the column on the line item covering the subject cement; or

(2) On CBP Form 214 or on an electronic version of CBP Form 214 (CBP Form e-214), as required by CBP, at the time of filing under part 146 of this chapter, in the case of an application for foreign trade zone (FTZ) admission and/or status designation.

(c) *Import license information.* There is no requirement to present physical copies of the import license to CBP at the time of filing either the CBP Form 7501 or CBP Form 214; however, importers must maintain copies in accordance with the applicable recordkeeping provisions set forth in the chapter.

(d) *Export license information.* Under regulations promulgated by the U.S. Department of Commerce, set forth at 19 CFR 361.101(d), importers of Mexican cement must submit an original, physical copy of a valid Mexican export license to CBP with the entry summary documentation (unless otherwise directed by CBP). In the case of an application for FTZ admission and/or status designation, the original physical copy of a valid Mexican export license must be provided to the FTZ operator with the CBP Form 214 (unless otherwise directed by CBP) and, in such case, upon withdrawal from the FTZ no paper export license will be required to be submitted to CBP with the merchandise's subsequent entry summary documentation. For multiple shipments at multiple ports, or multiple entries at one port, the original physical copy of the Mexican export license must be submitted to CBP (unless otherwise directed by CBP) with the first entry summary or to the FTZ operator with the CBP Form 214 or CBP Form e–214, as required by CBP, and a copy of the export license must be presented with each subsequent entry summary or CBP Form 214/e-214. Importers must also retain copies of the export license issued by the Mexican Government pursuant to the recordkeeping requirements set forth in part 163 of this title.

(e) *Duration of requirements.* The provisions set forth in this section are applicable for as long as the Agreement remains in effect.

PART 163—RECORDKEEPING

■ 3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 4. The Appendix to part 163 is amended by adding a new listing, in numerical order, for § 12.155 under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 12.155 Export license and import license for Mexican Cement.

* * * * *

Deborah J. Spero,

Acting Commissioner, Bureau of Customs and Border Protection.

Approved: February 28, 2007.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 07–997 Filed 3–5–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 361

[Docket Number: 060316072–5251–02]

RIN 0625–AA70

Mexican Cement Import Licensing System

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Import Administration (IA) issues this final rule to add new regulations implementing the Mexican Cement Import Licensing System in accordance with the Agreement between the Office of the United States Trade Representative and the Department of Commerce of the United States of America and the Ministry of Economy of the United Mexican States (Secretaría de Economía) on Trade in Cement (Agreement), signed March 6, 2006. This final rule requires all importers of cement from Mexico covered by the scope of the Agreement to obtain an import license from the Department of Commerce (Commerce) prior to completing their U.S. Customs and Border Protection (CBP) entry summary documentation. To obtain the import license, the importer, or the importer's broker or agent, must complete a form supplying certain information to Commerce about the Mexican Cement importation. The import license number will be generated immediately upon submitting the information and will be needed to complete the CBP entry documentation. IA will use the information recorded on the import license form as the basis for monitoring compliance with the Agreement.

In addition, IA informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

DATES: This final rule is effective April 5, 2007. Filers will be able to obtain their user identification numbers on or after March 16, 2007 and apply for import licenses on or after April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon (202) 482–0162; Judith Wey Rudman (202) 482–0192; or Jonathan Herzog (202) 482–4271. Additional information is available on Commerce's import licensing Web site *http://ia.ita.doc.gov/cement-agreement/index.html.*

SUPPLEMENTARY INFORMATION: IA issues this final rule to add new regulations implementing the Mexican Cement Import Licensing System (MCILS) in accordance with the Agreement, signed March 6, 2006. This final rule requires all importers of cement from Mexico covered by the scope of the Agreement to obtain an import license from Commerce prior to completing their CBP entry summary documentation. To obtain an import license, the importer, or the importer's broker or agent, must complete a form providing certain information to Commerce about the Mexican Cement importation. The import license number will be generated immediately upon submitting the information and will be needed to complete the CBP entry summary documentation. IA will use the information recorded in the import license form as the basis for monitoring compliance with the Agreement.

The proposed rule was published on May 31, 2006 (71 FR 30836) (''proposed rule''), inviting parties to submit comments through June 30, 2006. The rationale and authority for the program were provided in the preamble to the proposed rule and are not repeated here.

Comments on the Proposed Rule: Comments received during the public comment period set forth in the proposed rule are addressed in this final rule. Four parties submitted comments on the proposed rule. Most of the comments supported the licensing program and focused on a particular aspect of the licensing program concerning which the party wanted clarification or an adjustment. The comments are summarized below, with comments raised by more than one party addressed first. Please note that the numbering used in the proposed

rule, 19 CFR 360.201 through 360.205, has changed to 19 CFR 361.101 through 361.105 for purposes of this final rule. Therefore, all references in this document refer to 19 CFR 361.101 through 361.105.

Comment 1: Access to Information.

The Southern Tier Cement Committee (STCC) and Holcim (US), Inc. (Holcim) comment that, due to the limited amount of public, non-proprietary information expected to be generated by the MCILS, little aggregate information will be available for publication on IA's Web site. Therefore, according to the STCC and Holcim, it is important that Commerce provide interested parties timely access to the information derived from the MCILS in accordance with the administrative protective order in effect for this Agreement in order that the parties may review whether the Mexican exporters are complying with the terms of the Agreement. Similarly, GCC Cemento, S.A. de C.V. and GCC Rio Grande, Inc. (collectively GCCC) ask Commerce to clarify the sort of aggregate information that would be made available to the public and to confirm that business proprietary data would not be revealed.

Commerce Response: As noted in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, certain aggregate information collected from the MCILS will be available on the IA Web site. No business proprietary information will be posted on the Web site, *i.e.*, posted information will not be specific to a particular port or company. Instead, publicly available information will consist of the total quantity of Mexican Cement imports for all sub-regions combined. Further, Commerce will provide quarterly reports of information collected on the MCILS to parties that have been approved for access to business proprietary information under the administrative protective order in effect for this Agreement. *See* Appendix 26 of the Agreement, ''Agreement for Disclosure of and Access to Business Proprietary Information.''

Commerce has added 19 CFR 361.101(a)(5) to this final rule to address concerns about access to information and the use of business proprietary information.

Comment 2: Maintaining Up-To-Date Information.

The STCC comments that, unlike 19 CFR 360.102(b), which governs Commerce's Steel Import Monitoring and Analysis (SIMA) licensing system, 19 CFR 361.102(a)(2) does not include the language, ''It is the responsibility of the applicant to keep the information up-to-date,'' when discussing the information necessary to obtain a user identification number. The STCC asks that this language be added in order to ensure that the applicants for an import license from the MCILS will be aware of their responsibility to keep their information current.

Commerce Response: Commerce agrees with the STCC in this regard. For the purposes of this final rule, Commerce has added the sentence, ''It is the responsibility of the applicant to keep the information up-to-date,'' to 19 CFR 361.102(a)(2).

Comment 3: Types of Entries.

GCCC comments that Commerce used the phrase ''all imports of Mexican Cement'' in 19 CFR 361.101(a)(3), and the phrase ''all entries for consumption of covered Mexican Cement products'' in 19 CFR 361.101(b) when describing what products will require an import license. GCCC comments that Commerce should clarify whether all imports of Mexican Cement or all entries of Mexican Cement for consumption would require an import license. Specifically, GCCC asks whether a sample for testing purposes, which is not an entry for consumption, would require an import license.

Commerce Response: In order to provide Commerce with the ability to monitor this Agreement effectively, all entries of Mexican Cement included within the scope of the Agreement, including samples, whether or not for consumption, will be required to be accompanied by an import license issued through the MCILS. Commerce has added this clarification to 19 CFR 361.101(a)(3) and (b) of the final rule.

Commerce has also clarified 19 CFR 361.101(b) to state that all shipments of covered Mexican Cement into FTZs, known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents as stated in 19 CFR 361.101(c).

Comment 4: Multiple Products.

GCCC comments that, in the proposed rule, both the preamble and 19 CFR 361.101(a)(4) state that a single import license may cover multiple products as long as certain information on the import license remains the same. However, GCCC notes that the information which must remain the same differs between the two provisions and requests that Commerce clarify what information is required to be the same in order for an import license to cover multiple products.

Commerce Response: In order for an import license to cover multiple products, the following information must remain the same: Company Name, Address, City, State, Zip, Contact Name, Contact Phone, Contact Fax, Contact E-mail, Importer Name, Exporter Name, Manufacturer Name, Country of Origin, Country of Exportation, Expected Port of Entry, Expected Date of Importation, Expected Date of Export, Customs Entry Number (if known), Date License Valid From, Date License Valid Through, Date of Application, Subregion of Final Destination, Type of Affiliation, U.S. Affiliate's Name, Address, County, City, State, Zip, the Mexican Export License Number, and Disaster Relief Statement. Only the product-specific information (*i.e.*, HTSUS Number, Product Description, Quantity, Unit, Entered Value in U.S. $, and Unit Value) may differ, if a single import license is used to cover multiple products. Commerce has added this clarification to 19 CFR 361.101(a)(4) of the final rule.

Comment 5: Customs Entry Number Requirement.

GCCC comments that 19 CFR 361.103(b) and (c)(xiii) of the proposed rule are ambiguous as to whether the CBP entry number is required to be reported on the application for an import license if known at the time of completing the application. GCCC requests that Commerce clarify whether the CBP entry number is required to be reported on the application for an import license if it is known at the time of application.

Commerce Response: If the CBP entry number is known to the applicant at the time of applying for an import license, the party filing the application is required to report the CBP entry number. Commerce has added this clarification to 19 CFR 361.103(b) of the final rule.

Comment 6: Final Destination.

GCCC notes that 19 CFR 361.103(c)(xii) of the proposed rule states that an applicant must indicate the address of the silo/warehouse where the Mexican Cement will be kept until shipment to the first unaffiliated purchaser. According to GCCC, Mexican Cement that is stored in a silo or warehouse may be shipped to either an affiliated purchaser for resale or consumption, or to an unaffiliated purchaser. Therefore, GCCC requests that 19 CFR 361.103(c)(xii) of the proposed rule be amended to reflect this alternative.

GCCC also comments, with regard to 19 CFR 361.103(xii) of the proposed rule, that Mexican Cement may be stored in a silo or warehouse in one region and then later shipped to a different region, if the final customer is not known at the time of entry and application for the import license. Therefore, GCCC requests that Commerce confirm that in such a situation, the final destination should be identified as the silo or warehouse

where the cement is stored upon importation, even if the cement is ultimately consumed or sold in a different sub-region.

Commerce Response: During the negotiation of this Agreement, Commerce worked with all of the interested parties and their representatives, including GCCC, to develop the type of information needed to be collected by the MCILS in order for the system to be effective. Commerce and Secretaría de Economía submitted several rounds of draft agreement text, including the appendices, for comment and review by the interested parties. After extensive deliberation and negotiation, all parties agreed to the Agreement and its related Appendices. Appendix 20 of the Agreement defines ''Final Destination'' exactly as it appears in 19 CFR 361.103(c)(xii) of the proposed rule and as intended by the drafters of the Agreement. As such, Commerce cannot modify the language of 19 CFR 361.103(c)(xii) of the final rule without modifying the terms of the Agreement. Therefore, for the purposes of the final rule, Commerce will not amend the language of 19 CFR 361.103(c)(xii) as GCCC has requested.

In its entirety, the Agreement establishes a three-part monitoring system that includes export licenses issued by the Government of Mexico, an import license issued by Commerce, and monthly sales reports provided by the Mexican exporters and related importers. In accordance with Appendix 22 of the Agreement, any Mexican party exporting Mexican Cement to the United States is required to obtain an export license which states the ''Sub-Region of Final Destination'' to which the Mexican Cement is being exported. The export license number is to be reported on the import license issued by Commerce. Further, in accordance with Appendix 20 of the Agreement, to obtain an import license from Commerce, the importer must provide the ''Sub-Region of Final Destination'' in addition to the ''Final Destination.'' ''Sub-Region of Final Destination'' is defined in Appendix 20 as the ''Sub-region where either the Mexican Cement will be consumed by an affiliated company to make concrete or concrete products or the Sub-region of the first unaffiliated purchaser of Mexican Cement.'' The Sub-Region of Final Destination reported on the Mexican export license must match the Sub-Region of Final Destination reported on the import license. Thus, when reporting ''Final Destination'' as set out in 19 CFR 361.103(c)(xii) of the final rule, the final destination, including the silo or warehouse in which the Mexican Cement may be stored, may not differ from the Sub-Region of Final Destination reported on both the export and import licenses. In a situation where the end customer is not known at the time of importation and the product is stored in a silo or warehouse, if the Mexican Cement is sold into a Sub-region other than that listed on the export and import licenses, Commerce may commence an investigation pursuant to the terms of the Agreement, including, but not limited to, initiating a changed circumstances review in accordance with Section VII of the Agreement.

Comment 7: Mexican Export License Number.

GCCC comments that when the company ships Mexican Cement, the tonnage in a shipment may be covered by two separate Mexican Export Licenses, if the tonnage limit for one Mexican Export License is reached and a new Mexican Export License is needed to cover the additional quantity. Therefore, GCCC requests that Commerce confirm whether it will require the importer to identify the tonnage and value that correspond to each Export License, or if it will require the importer to list the total quantity and value for the entire shipment and list both Mexican Export License Numbers on its application for an import license.

Cemex, S.A. de C.V. (Cemex) comments that the proposed rule does not explicitly say whether a single import license may be used for more than one entry if all of the information on the import license is the same and requests that Commerce explicitly state in the final rule if a single import license may be used for more than one entry.

Commerce Response: The MCILS and the Mexican Export License systems are being established to track the quantity and value of Mexican Cement shipments accurately and on a real-time basis. Commerce must be able to trace specific quantities and values from a given Mexican Export License to an import license to ensure proper monitoring of the Agreement's sub-regional quotas. As designed, the application for an import license will only allow for the applicant to enter a single Mexican export license number. Thus, if a shipment of 100 metric tons (MT) is entered into the United States, 60 MT of which applies to one Mexican Export License, and 40 MT of which applies to a second Mexican Export License, the importer must obtain an import license for 60 MT and a second import license for 40 MT.

Further, a separate import license is also required for each entry made pursuant to separate export licenses. Therefore, a separate import license is required for every entry of Mexican Cement. Commerce has added language clarifying these requirements in 19 CFR 361.101(a)(4) and (d) of the final rule.

Comment 8: Copies of Licenses.

GCCC comments that because only Commerce will have access to the completed import licenses after the date they are issued, Commerce should state how long it intends to maintain the import licenses. GCCC requests that Commerce maintain copies for the entire period that the Agreement is in effect. Cemex comments that the proposed rule does not provide a time frame in which Commerce will be required to issue a copy of an import license to a requesting party. Cemex suggests that Commerce be required to issue a copy of an import license within 24 hours of when it is requested, and that it would be useful if there were an expedited procedure for obtaining a copy in a shorter period of time where the absence of a copy of the import license is impeding entry of Mexican Cement.

Commerce Response: An importer will be able to access copies of the import licenses it has obtained through the MCILS via the MCILS Web site. In the event that the MCILS Web site is not accessible, Commerce will normally issue a copy by fax or standard mail within two business days. However, where the absence of an import license impedes entry of Mexican Cement, Commerce will make every effort to work with the importer and CBP to resolve the problem as quickly as possible.

Comment 9: Correcting/Cancelling Import Licenses.

GCCC raises two questions. First, 19 CFR 361.103(e) of the proposed rule states that applicants may cancel import licenses which contain errors prior to entry and file for a new import license with corrected information. GCCC asks whether there is a way to correct inadvertent errors to the import license after entry. Second, GCCC asks how Commerce will address situations in which an importer obtains an import license, but is notified of a cancelled sale after the entry date.

Commerce Response: It is Commerce's intent that the MCILS monitor imports of Mexican Cement as accurately as possible. Any errors contained in an import license should be corrected prior to entry by correcting the import license or by cancelling the import license and applying for a new import license. In the situation where an inadvertent error

is discovered after entry, applicants will be able to correct the import license or cancel the import license and apply for a new import license. Commerce will monitor such actions closely and reserves the right to investigate corrections made after entry. If Commerce determines that an error corrected after entry was not an inadvertent error, Commerce may take appropriate action in accordance with the terms of the Agreement.

Further, all Mexican Cement imported into the United States covered by the scope of the Agreement is required to have an import license. This requirement includes any Mexican Cement imported into the United States pursuant to a sale that is cancelled after entry.

Comment 10: Typographical Error.

The STCC comments that there appears to be a typographical error in 19 CFR 361.104 of the proposed rule.

Commerce Response: Commerce agrees and has corrected this error by adding the word ''or'' to the sentence in 19 CFR 361.104 of the final rule.

Regulatory Flexibility Act

The Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* A summary of the factual basis for this certification is below.

Commerce is unable to determine the number of brokerage companies and importers that would be impacted by this rule as Commerce does not collect this information. However, based on historical data, Commerce estimates that there are few brokerage companies and importers that would be considered small entities under Small Business Administration's standard (5 U.S.C. 603(b)(3)). Typically, larger brokers handle Mexican Cement shipments because of the capital that is needed upfront to handle bonds and other costs. Each importer or broker must fill out the import license form for each entry of the subject merchandise. Based on CBP entry summary information, we estimate that 12,150 import licenses will be issued each year. Of this number, only a small percentage of import licenses would be requested by a small entity as a result of this rule.

Even if this rule impacted a large number of small entities, these entities would not incur significant costs to comply with the proposed regulations. Most brokerage companies that are currently involved in filing required documentation for importing goods into the United States, specifically CBP documentation, are accustomed to CBP's automated systems. Today, more than 99 percent of CBP filings are handled electronically. Therefore, the web-based nature of this simple import license application should not impose a significant cost to any firm in completing this new requirement. However, should a company prefer or need to apply for an ID or import license by other than electronic means, a fax/phone option will be available at Commerce during regular business hours. There is no cost to register for a company-specific user identification number and no cost to apply for an import license.

Each import license form is expected to take at most about 10 minutes to complete using much of the same information the brokers will use to complete their CBP entry summary documentation. The response time should not vary widely because the same information is used to fill out other required CBP documents. The estimated average cost to private sector respondents is $20.00 per hour.

Based on the estimated 12,150 import licenses that will be issued each year, the total cost to respondents as a result of this rule is $40,500.00. Based on historic CBP information, there are few small entities that would be affected by this rule. Therefore, of this amount, only a small percentage of the total cost would be incurred by small entities. Based on these figures, this action will not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this rule. As a result, no Final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been approved by OMB under the Paperwork Reduction Act (OMB No.: 0625–0259; Expiration Date: December 31, 2009). The public reporting burden for these collections of information is estimated at 10 minutes. Parties must maintain copies in accordance with CBP's existing requirements. The import licensing system requests information already required of an importer, approval is automatic, and the importer will have ample opportunity and time to apply. These estimates of time required to complete an application include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

All responses to this collection of information are mandatory, and will be provided to the extent allowed by law. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act unless that collection displays a valid OMB Control Number. Send comments on the reporting burden estimate or any other aspect of the requirements in this final rule to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: ITA Desk Officer).

Executive Order 12866

It has been determined that this rule is significant for purposes of Executive Order 12866 of September 30, 1993 (''Regulatory Planning and Review'') (58 FR 51735 (October 4, 1993)).

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

■ For the reasons set out in the preamble, 19 CFR part 361 is added as follows:

PART 361—MEXICAN CEMENT IMPORT LICENSING SYSTEM

Sec.
361.101 Mexican Cement Import Licensing System.
361.102 Online registration.
361.103 Automatic issuance of import licenses.
361.104 Fees.
361.105 Hours of operation.

Authority: 13 U.S.C. 301(a) and 302.

§ 361.101 Mexican Cement Import Licensing System.

(a) *In general.* (1) On March 6, 2006, the Agreement between the Office of the United States Trade Representative and the Department of Commerce of the United States of America and the Ministry of Economy of the United Mexican States (Secretaria de Economia) on Trade in Cement (Agreement) was signed. Pursuant to the Agreement, the United States has agreed to implement an import licensing system for imports of merchandise covered by the scope of the antidumping duty order on Cement from Mexico. Some of the data to be collected is in addition to data currently collected by U.S. Customs and Border Protection (USCBP). The data collected

by the Mexican Cement Import Licensing System will be used by the Department of Commerce (Commerce) to monitor imports of Mexican Cement, as the imports occur.

(2) Mexican Cement is defined as gray portland cement and clinker from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than being ground into finished cement. Specifically included within the scope of this definition are pozzolanic blended cements and oil well cements. Specifically excluded are white cement and Type ''S'' masonry cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item number 2523.29 and cement clinker is currently classifiable under HTSUS item number 2523.10. Gray portland cement has also been entered under HTSUS item number 2523.90 as ''other hydraulic cements.'' These HTSUS subheadings are provided for convenience and USCBP purposes; the written definition is controlling for purposes of this Agreement.

(3) The Mexican Cement Import Licensing System includes an online registration system. All imports of Mexican Cement covered by the scope of the Agreement, including samples, whether or not for consumption, are subject to the Mexican Cement Import Licensing requirements. Information gathered from these import licenses will be used to ensure that the terms of the Agreement are complied with and enforced.

(4) A single import license may cover multiple products if the following information reported on the import license remains the same: Company Name, Address, City, State, Zip, Contact Name, Contact Phone, Contact Fax, Contact E-mail, Importer Name, Exporter Name, Manufacturer Name, Country of Origin, Country of Exportation, Expected Port of Entry, Expected Date of Importation, Expected Date of Export, Customs Entry Number (if known), Date License Valid From, Date License Valid Through, Date of Application, Subregion of Final Destination, Type of Affiliation, U.S. Affiliate's Name, Address, County, City, State, Zip, Mexican Export License Number, and Disaster Relief Statement. Separate import licenses will be required for each type of Mexican Cement entry if the above information differs. As a result, a single USCBP entry summary may require more than one Mexican Cement import license. The applicable import license(s) must cover the total quantity of Mexican Cement entered and should cover the same information provided on USCBP Form 7501.

(5) Access to Information. (i) Information gathered by the Mexican Cement Import Licensing System will be treated as business proprietary information and will be subject to the administrative protective order in place for this Agreement. Commerce may elect to publish certain aggregate information collected by the Mexican Cement Import License System on the Import Administration Web site. Any information Commerce elects to publish will not include business proprietary information nor information from specific ports of entry or companies.

(ii) In accordance with 19 CFR 351.305, interested parties who have been approved for access to business proprietary information under the administrative protective order in effect for this Agreement will receive a quarterly report of all information gathered by the Mexican Cement Import License System.

(b) *Covered Entries.* All entries of Mexican Cement subject to the Agreement, including samples, whether or not for consumption, will require an import license prior to the filing of USCBP Form 7501, except as provided in § 361.101(c). The import license number(s) must be reported on USCBP Form 7501 at the time of filing. There is no requirement to present physical copies of the import license forms at the time of filing USCBP Form 7501; however, copies must be maintained in accordance with USCBP's existing requirements. Submission of a USCBP Form 7501 without the required import license number(s) will be considered circumvention of the Agreement.

(c) *Foreign Trade Zone entries.* All shipments of covered Mexican Cement into FTZs, known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents. The import license number(s) must be reported on the application for FTZ admission and/or status designation (USCBP Form 214) at the time of filing. There is no requirement to present physical copies of the import license forms at the time of FTZ admission; however, copies must be maintained in accordance with USCBP's existing requirements. Submission of FTZ admission documents without the required import license number(s) will be considered circumvention of the Agreement. A further Mexican Cement import license will not be required for shipments from FTZs into the commerce of the United States.

(d) *Mexican Export License Requirement.* Each importer is required to submit a valid Mexican Export License to USCBP with its 7501 entry summary. For multiple shipments at multiple ports, or multiple entries at one port, the original Mexican Export License shall be presented with the first 7501 entry summary and a copy of the Export License shall be presented with each subsequent 7501 entry summary. In the case where an entry is covered by two Mexican export licenses, the importer must obtain two separate import licenses (*e.g.*, if a shipment of 100 metric tons (MT) is entered into the United States, 60 MT of which applies to one Mexican Export License, and 40 MT of which applies to a second Mexican Export License, the importer must obtain an import license for 60 MT and a second import license for 40 MT).

§ 361.102 Online registration.

(a) *In General.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the user identification number necessary to log on to the automatic Mexican Cement import license issuance system. Foreign companies may obtain a user identification number if they have a U.S. address through which they may be reached; P.O. Boxes will not be accepted. A user identification number normally will be issued within two business days. Companies will be able to register online through the import licensing Web site. However, should a company prefer to apply for a user identification number non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to the Mexican Cement import license issuance system. A single user identification number will be issued to an importing company, brokerage house or importer's agent. Operating units within the company (*e.g.*, individual branches, divisions, or employees) will all use the same company user identification number. The Mexican Cement import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number.* In order to obtain a user identification number, the importer, importing company, customs broker or importer's agent will be required to provide certain general information. This information will include: the filer's company name,

employer identification number (EIN) or USCBP ID number (where no EIN is available), U.S. street address, telephone number, e-mail address, and contact information for both the company headquarters and any branch offices that will be applying for Mexican Cement import licenses. It is the responsibility of the applicant to keep this information up-to-date. This information will not be released by Commerce, except as required by U.S. law.

§ 361.103 Automatic issuance of import licenses.

(a) *In general.* Mexican Cement import licenses will be issued to registered importers, customs brokers or their agents through the automatic Mexican Cement Import Licensing System. The import licenses will be issued automatically after the completion of the form.

(b) *USCBP entry number.* Filers are required to report a USCBP entry number to obtain an import license if the USCBP entry number is known at the time of filing for the import license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

(i) Applicant company name and address;

(ii) Applicant contact name, phone number, fax number and e-mail address;

(iii) Importer name;

(iv) Exporter name;

(v) Manufacturer name;

(vi) Country of origin;

(vii) Country of exportation;

(viii) Expected date of export;

(ix) Expected date of import;

(x) Expected port of entry;

(xi) Sub-Region of Final Destination: Indicate the Sub-region where either the Mexican Cement will be consumed by an affiliated company to make concrete or concrete products or the Sub-region of the first unaffiliated purchaser of the Mexican Cement.

(xii) Final Destination: Indicate the complete name and address (including county) of either the affiliated company that will consume the Mexican Cement or the first unaffiliated purchaser of the Mexican Cement. If either is not known when the Import License is issued, indicate the address (including county) where the Mexican Cement will be siloed/warehoused until the time of shipment to the first unaffiliated purchaser.

(xiii) USCBP entry number, if known;

(xiv) Current Harmonized Tariff System of the United States (HTSUS) number (from Chapter 25 of the HTSUS);

(xv) Quantity (in metric tons);

(xvi) Customs value (U.S. $);

(xvii) Whether the entry is made pursuant to the disaster relief provisions of the Agreement; and

(xviii) Mexican Export License Number.

(2) Certain fields will be automatically completed by the automatic import license system based on information submitted by the filer (*e.g.*, product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After submitting the completed form, the system will automatically issue a Mexican Cement import license number. The refreshed form containing the submitted information and the newly issued import license number will appear on the screen (the ''import license form''). If needed, copies of completed import license forms can be requested from Commerce during normal business hours.

(d) *Duration of the Mexican Cement import license.* The Mexican Cement import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of USCBP Form 7501, or in the case of FTZ entries, the filing of USCBP Form 214. The Mexican Cement import license is valid for 60 days; however, import licenses that were valid on the date of importation but expired prior to the filing of USCBP Form 7501 will be accepted.

(e) *Correcting submitted license information.* If an error is discovered in the import license after the entry date listed on USCBP Form 7501, filers will be able to correct the import license or cancel the import license and obtain a new import license. Commerce reserves the right to verify any changes made to an import license after entry and may take appropriate action under the terms of the Agreement if it determines that a violation of the Agreement has occurred.

§ 361.104 Fees.

No fees will be charged for obtaining a user identification number or issuing a Mexican Cement import license.

§ 361.105 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be down at selected times for server maintenance. If the system is down for an extended period of time, parties will be able to obtain import licenses from Commerce directly via fax during regular business hours.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 07–996 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DS–P

Federal Register

Tuesday,
March 6, 2007

Part III

Department of Housing and Urban Development

Additional Waivers Granted to and Alternative Requirements for the State of Louisiana Under Public Laws 109–148 and 109–234; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5089–N–03]

Additional Waivers Granted to and Alternative Requirements for the State of Louisiana Under Public Laws 109–148 and 109–234

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers and alternative requirements.

SUMMARY: As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this grant, upon the request of the state grantee. This Notice describes the additional waivers for the disaster recovery grants made to the state of Louisiana under the subject appropriations acts.

DATES: *Effective Date:* March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Acting Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–2684. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Taffet at (202) 708–1744. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The first federal fiscal year 2006 supplemental appropriation for the Community Development Block Grant (CDBG) program was the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005). The second 2006 supplemental appropriation was Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234, approved June 15, 2006) which appropriates $5.2 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The 2006 Acts authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the State and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following waivers and alternative requirements for funds provided under either 2006 Act are in response to requests from the State of Louisiana. A waiver or alternative requirement will apply to assistance provided under either Act unless otherwise specified in this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**.

Except as described in this and other notices applicable to this grant, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the appropriations acts, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

Waiver Justification

In general, waivers already granted to the state of Louisiana and alternative requirements already specified for CDBG disaster recovery grant funds provided under Public Law 109–148 and Public Law 109–234 apply. The notices in which these prior waivers and alternative requirements applicable to Louisiana appear are 71 FR 7666, published February 13, 2006; 71 FR 34451, published June 14, 2006; and 71 FR 63337, published October 30, 2006.

The provisions of this Notice do not apply to funds provided under the regular CDBG program. The provisions provide additional flexibility in program design and implementation and implement statutory requirements unique to these appropriations.

Eligibility—buildings for the general conduct of government. The state requested additional flexibility in the previously granted alternative requirement that permitted funding the cost share for the FEMA Public Assistance or Hazard Mitigation Grant Program when disaster recovery CDBG funds assist buildings for the general conduct of government. The requested change will allow the state to fund more than just the amount of the FEMA cost share for a project in this activity category. The change will also permit use of grant funds for allowable rehabilitation, construction, or reconstruction costs in otherwise FEMA eligible projects when these costs are ineligible for FEMA assistance, such as the costs to assist rehabilitation or reconstruction of qualifying buildings that were underinsured or uninsured, and to allow funding to bring a selected building up to code or to allow it to receive a certificate of occupancy and be put into service. HUD considered the state's request and agreed that it is consistent with the overall purposes of the 1974 Act for the state to be allowed to use the grant funds under this notice to fund critical projects involving repair of buildings for the general conduct of government that the state has selected in accordance with the method described in its HUD-approved Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery, even if the funding provided under this notice assists some costs that do not qualify as cost share for the FEMA Public Assistance or Mitigation programs.

Eligibility—Research Commercialization and Educational Enhancement. According to the state's proposed Action Plan amendment, the Research Commercialization and Educational Enhancement (RCCE) Program is ''intended to restore the economic impact of scientific and technology research facilities within higher education institutions in the most severely affected areas.'' Activities under this program may include, but are not limited to, stipends for students, related training, purchase of critical equipment, stipends for research professionals, and development of a master strategic plan for meeting the program's intent.

Normally, HUD provides funds to a research institution or a university either to increase its capacity to carry out a CDBG activity such as rehabilitation of housing, to carry out specific research, or to provide training. By contrast, the RCEE program is directed at stabilizing and increasing research and education sector employment and functions themselves. The state has stated that this sector was a significant regional job generator before the covered disasters, that

Hurricane Katrina and its aftermath critically damaged many aspects of the research sector, and that the RCEE program is a critical component of the state's long-term economic recovery.

To accomplish its stated intention, the State is funding strategic planning followed by a pilot assistance program for research institutions located in the most impacted areas. At HUD's request, the state has agreed that this planning process will identify critical performance measures for this program so that all parties involved can assess the usefulness of the RCEE model as part of overall disaster recovery.

The RCEE program design does not break down neatly into CDBG eligibility categories. Portions of the RCEE program are eligible CDBG activities, such as training (public services) and strategic planning. Other portions, especially the stipends and other direct support for retaining key faculty researchers, are outside the usual CDBG realm, although modeled on other government research and endowment grant programs. Program staff will be coordinating the various types of assistance into a coherent whole, moving between supporting eligible and currently ineligible activities.

To avoid bureaucratic hair-splitting that does not advance long-term disaster recovery or protect against fraud, waste, or abuse of funds, HUD is providing a waiver and alternative requirement to create the eligible activity called Louisiana Research Commercialization and Educational Enhancement to include all activities carried out in accordance with the RCEE program described in the HUD-approved Action Plan, beginning with the amendment introducing this program, approved January 3, 2007. (The allowable cost provisions of applicable OMB Circulars still apply, as do statutory prohibitions on duplications of benefit with other forms of assistance, such as Federal programs.)

Documentation of low- and moderate-income household benefit for multi-unit housing projects. Rehabilitation and reconstruction of housing is an eligible CDBG activity. HUD has already granted the state an eligibility waiver to allow new construction of housing. Now the state has requested a related waiver to allow it to fund multi-unit projects and to measure benefit to low- and moderate-income households in such projects in a manner more supportive of mixed income housing than the structure basis required by 24 CFR 570.483(b)(3). (Under the cited regulation, the general rule is that at least 51 percent of the residents of an assisted structure must be income eligible.)

HUD has reviewed other housing assistance programs that measure benefit differently: By the housing unit. Under the unit approach, one or more of the units in a structure must house income-eligible families, but the remainder of the units may be market rate, so long as the proportion of assistance provided compared to the overall project budget is no more than the proportion of units that will be occupied by income-eligible households compared to the number of units in the overall project. In other words, the rule under the structure approach is that a dollar of CDBG assistance to a structure means that 51 percent of the units must meet income requirements. Under the proportional units approach, the number of income-eligible units is proportional to the amount of assistance provided. Based on HUD experience, the second approach is generally more compatible with large-scale development of mixed-income housing.

There is HUD precedent for using the proportional unit basis in two programs familiar to the state: (1) The CDBG program rule has a built-in exception that allows limited use of the unit basis for multi-unit non-elderly new construction structures with between 20 and 50 percent low- and moderate-income occupancy, and (2) the HOME Investment Partnerships program, HUD's primary housing production program, successfully uses its own variation on the proportional unit approach. After review of the state's Action Plan for Disaster Recovery and learning more about the state's intention to encourage mixed-income housing development, HUD has determined that it is consistent with the overall purposes of the 1974 Act to provide the state the requested additional flexibility in measuring program benefit.

Therefore, the waiver and alternative requirements allow the state a choice. The state may measure benefit within a housing development project (1) according to the existing CDBG requirements, (2) according to the HOME program requirements at 24 CFR 92.205(d) or (3) according to the modified CDBG alternative requirements specified in this notice, which extend the CDBG exception noted above. The state must select and use just one method for each project.

For these purposes, the term ''project'' will have the same meaning as in the HOME program at 24 CFR 92.2. Unlike the HOME program, the CDBG program does not regulate the maximum amount of assistance per unit, require unit and income reviews in the years following initial occupancy, require a specific form of subsidy layering review, or define affordability. The state is reminded, however, that CDBG does require that costs be necessary and reasonable and that the state must develop procedures and documentation to ensure that its housing investments meet this requirement. The state must also meet all civil rights and fair housing requirements.

Eligibility—Operating Subsidy for Affordable Rental Housing. The State requested a waiver to allow a Project-Based Rental Subsidy (PBRA) and assistance to establish operating reserves to encourage developers to rebuild rental and mixed-income housing in the areas that suffered the greatest disaster impact. The subsidy funding, which is ''Piggyback'' funding generally designed to be linked to the use of housing tax credits or funding under another of the rental programs delineated in the State's HUD approved Action Plan for Disaster Recovery, targets housing for low-income and very-low-income families and is limited in amount to the difference between the rents that a project is projected to need to sustain itself, and a specified lower level that can be reasonably afforded by the tenants. With its affordable rental programs, the State proposes to address specific barriers unique to the affordable rental programs outlined by the State's Action Plan (see The Road Home Housing Programs described in the State's Action Plan for Disaster Recovery) such as the lack of affordability in the most heavily damaged areas, the lack of permanent financing for mixed-income rentals, and the need for more risk-tolerant pre-development capital.

In its Road Home programs, the State has set a high priority on deep affordability for some rental units and on placing these units within mixed-income communities wherever feasible. The state has included new scoring factors in the Piggyback tax credit selection process that reflect these priorities and that emphasize long-term viability and reduce operating costs. According to the state, the biggest remaining challenge in providing rental units affordable to very low-income households is the difference between what tenants can afford to pay and the projected cost of operating the units.

The state has researched existing housing models, and concluded that the Piggyback model and the small rental and homeless programs described in the Road Home are needed to ensure production of affordable units. The state believes it has a critical need for income-targeted rental housing

production programs. Although the state has made financing available for rental housing construction, it believes that it will need also to provide operating subsidy options for some projects to ensure they are affordable to very low-income households.

HUD agrees that keeping housing affordable to very low-income households over time may require additional operating subsidy after construction is complete. To allow the state flexible options, HUD will allow CDBG assistance for subsidizing operating costs using PBRA and funding initial operating reserves in the context of the Road Home rental programs as described in the Action Plan. The Department encourages the State to avoid using CDBG for operating subsidies if other financing is available or if the project can reasonably be structured to achieve and maintain its target affordability without the operating subsidy.

HUD recommends that the State establish written requirements for income eligibility, maximum rents, utility allowances, structure quality, and affirmative marketing of projects. HUD also recommends that inflation adjustments set by the State generally not exceed the Section 8 allowable adjustments.

HUD recommends that, in implementing PBRA funding, the State acquire and maintain the expertise equivalent to the role of a tax credit administrator whose responsibilities will include, but not be limited to, making PBRA payments to procured developers and compliance control of eligibility determinations. Due to the distinctive and potentially high-risk nature of this eligibility waiver, HUD recommends that such expertise be maintained throughout the life of the program to ensure the prevention of fraud, abuse of funds, and duplication of benefits. HUD reminds the state of the regulatory requirement for annual financial audits of its programs, and of the **Federal Register** Notice 71 FR 7666 and 71 FR 73337 requirements that its entire program be under the purview of an internal auditor.

Eligibility—Homeless Prevention and Rapid Rehousing. The State has requested an eligibility waiver to allow it to implement a Homeless Prevention and Rapid Rehousing Program using funds designated for homeless activities in its Action Plan. The principle of this program model is to minimize the time a family is homeless by providing re-housing assistance, rental assistance, and linking the family to services designed to help it become stable and self-sufficient. The State's request notes that it has modeled its program on the rapid rehousing program approach that the National Alliance to End Homelessness has endorsed as a national best practice. The State also notes that as a consequence of Hurricanes Katrina and Rita: ''Thousands of families today are doubled up with family and friends, facing eviction, in temporary housing conditions affordable only with time limited FEMA rental assistance, or living in FEMA trailer villages—unsure what they are going to do when assistance runs out.''

The State needs an eligibility waiver for the rental assistance and utility payments that are paid for up to two years on behalf of homeless and at-risk households. The proposed program also includes rental and utility deposits and back payments for housing when the State determines that such payments are necessary to help prevent a family from becoming homeless. To the extent the existing CDBG program rules explicitly allow payments for these purposes, the program establishes a shorter time limitation (three months) and generally discourages or disallows back payments.

The State's proposed program will measurably advance the Department's priority on supporting forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness because of the effects of Hurricanes Katrina and Rita. Therefore, this Notice grants the eligibility waiver as requested.

Documentation of low- and moderate-income benefit and public benefit for certain economic development activities. For some of its economic development programs, the state has requested one waiver to allow it to provide alternate documentation of low- and moderate-income benefit, and another waiver to extend the public benefit standard waiver granted in **Federal Register** Notice 71 FR 7666 for the Bridge Loan Program to the economic development activities from Action Plan Amendments 2 and 8 and to FEMA public assistance cost share infrastructure projects carried out for the purpose of creating or retaining jobs.

For the national objective documentation for the business assistance activities, the state has asked to be able to apply individual salaries or wages per job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits by total household size. The state asserts that its proposed documentation will be simpler and quicker for its participating lenders to administer, easier to verify, and will not misrepresent the amount of low- and moderate-income benefit provided.

Further, for the Bridge Loan Program and for infrastructure projects carried out to create or retain jobs or businesses, the state argues for this approach because it considers these critical recovery activities that need the most streamlined approach to documentation that is consistent with prudent management. On review and following several discussions with state staff, HUD accepts the state's arguments for the activities and programs cited above, and is granting the waiver as requested.

HUD is granting this waiver because of the magnitude of the disaster. However, because the validity of this approach has not been verified systematically, HUD may not grant similar waivers in the future.

The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. The State has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, this Notice waives the public benefit standards for the cited activities, except that the State shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (c) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

Voluntary acquisition under the Piggyback Program. In connection with the State's Low Income Housing Tax Credit Piggyback Program, various developers obtained options for the acquisition of specific properties to

create mixed income rental housing and workforce housing projects to replace rental housing lost during the hurricanes. The options were obtained on a voluntary basis by developers without the use or threat of eminent domain and prior to the availability of federal funding. However, since these projects will now be receiving CDBG disaster funding assistance, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (the URA) will apply where the property acquisition has not been completed. The state has requested a waiver related to acquisition requirements under the URA for specific projects with existing options. The state has asked that HUD permit the waivers to help complete the acquisition of property and promote the replacement of housing in a timely and efficient manner. The state believes that these waivers will have little impact on those persons who voluntarily entered into these option agreements prior to the availability of federal funding.

CDBG funds are federal financial assistance so their use in projects that involve acquisition of property for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the government-wide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

The acquisition requirements of the URA and implementing regulations so that they do not apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase of properties for the projects listed in the waiver below. According to the state, the failure to suspend these requirements would impede disaster recovery. This waiver would not affect any lawful occupants of the affected projects, in terms of relocation assistance and payments, and would only waive certain transaction-related requirements vis a vis the project owners.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General note.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. those governing the funds appropriated under Public Law 109–148 and Public Law 109–234 and already published in the **Federal Register**, including those in Notices 71 FR 7666, published February 13, 2006; 71 FR 34451, published June14, 2006; and 71 FR 63337, published October 30, 2006.

b. those governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 et seq. and 24 CFR part 570.

2. *Buildings for the general conduct of government.* Waiver 11 of notice 71 FR 34451 is replaced with the following: 42 U.S.C. 5305(a) and 24 CFR 507.207(a)(1) are waived to the extent necessary to allow the state to use the grant funds under this notice to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible and that the state selects in accordance with its approved Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

3. *Eligibility—Louisiana Research Commercialization and Educational Enhancement program (RCEE).* Activities carried out in accordance with the HUD approved Action Plan for the RCEE program approved January 3, 2007, are eligible.

4. *Documentation of low- and moderate-income benefit for multi-unit housing projects.* HUD will consider assistance for a multi-unit housing project involving new construction, acquisition, reconstruction, or rehabilitation to benefit low- and moderate-income households in the following circumstances:

(a)(i) The CDBG assistance defrays the development costs of a housing project providing eligible permanent residential units that, upon completion, will be occupied by low- and moderate-income households; and

(ii) if the project is rental, the units occupied by low and moderate income households will be leased at affordable rents. The grantee or unit of general local government shall adopt and make public its standards for determining ''affordable rents'' for this purpose; and

(iii) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low- and moderate-income households; or

(b) When CDBG funds defray the development costs of eligible permanent residential units, such funds shall be considered to benefit low and moderate income persons if the grantee follows the provisions of 24 CFR 92.205(d); or

(c) The requirements of 24 CFR 570.483(b)(3) are met.

(d) The state must select and use just one method for each project.

(e) The term ''project'' will be defined as in the HOME program at 24 CFR 92.2.

(f) If the state applies option (a) or (b) above to a housing project, 24 CFR 570.483(b)(3) is waived for that project.

5. *Waiver to permit operating subsidies for affordable rental housing.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible the Road Home project-based rental assistance program included in the state's HUD-approved Action Plan for Disaster Recovery provided that the assisted activities are designed to ensure that CDBG funds will be invested only to the extent of reasonably anticipated need. Also in conjunction with the Road Home rental program, the grantee may provide assistance to establish an initial operating reserve account for a project receiving other Road Home assistance.

6. *National objective documentation for certain economic development activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the grantee to establish low- and moderate-income jobs benefit by documenting for each person employed the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.

7. *Eligibility of certain activities to support homeless prevention and rapid rehousing programs.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible rental assistance and utility payments paid for up to two years on behalf of homeless and at-risk households when such assistance or payments are part of a homeless prevention or rapid rehousing program. Eligible assistance in these programs may also include rental and utility deposits and back payments for housing when the State determines that such payments are necessary to help prevent a family from being homeless.

8. *Public benefit standards for economic development activities.* For economic development activities designed to create or retain jobs or businesses (including but not limited to BRIDGE, Short term, Long term, infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) average amount of assistance provided per job by activity or program, and (c) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

9. *Voluntary acquisition under the Piggyback program.* The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an existing option for the arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase of property for the projects listed below, so long as the initial option pre-dates December 22, 2006.

LHFA project ID	Project name	Parish	Est. total units
0708FA37	The Meadows	Calcasieu	180
0708FA43	Renoir Acres Estates II	Calcasieu	60
0708FA44	Monet Acres Estates II	Calcasieu	60
0708FA48	Sulphur Retirement Community	Calcasieu	60
0708FA52	Grand Lake Elderly	Cameron	30
0708FA01	Timberlane Apartments	Jefferson	164
0708FA22	Beechgrove Homes	Jefferson	100
0708FA28	Wellswood Manor	Jefferson	84
08FA49	Oak Villa	Jefferson	80
0708FA30	Lafitte Redevelopment	Orleans	568
0708FA26	St Bernard I	Orleans	465
0708FA24	BW Cooper I	Orleans	410
0708FA25	CJ Peete III	Orleans	410
0708FA42	Rivergarden CSII	Orleans	310
0708FA57	Canterbury House Apts-New Orleans East	Orleans	276
0708FA47	The Marquis Apartments	Orleans	250
0708FA08	The Villas at Lake Forest	Orleans	230
0708FA11	The Crescent Club	Orleans	226
0708FA41	Walnut Square Apartments	Orleans	209
0708FA13	200 Carondelet	Orleans	190
0708FA10	The Preserve	Orleans	183
0708FA38	Crescent Garden Homes	Orleans	143
0708FA36	Levey Gardens	Orleans	100
0708FA40	Nine 27	Orleans	76
0708FA09	Jefferson Davis Apartments	Orleans	72
0708FA61	Indiana Homes	Orleans	60
0708FA64	Orleans Place	Orleans	60
0708FA27	Classic Construction of New Orleans Venture II	Orleans	56
0708FA29	Constance Lofts	Orleans	47
0708FA23	Delta Oaks Homes	Orleans	40
0708FA63	Old Morrison Homes	Orleans	38
0708FA07	Lakeside Apartments	St. Tammany	250
0708FA06	Tiffany Apartments	Vermilion	250
Totals			5737

10. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165, which expires August 31, 2007. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Dated: February 27, 2007.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E7–3830 Filed 3–5–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
March 6, 2007

Part IV

Department of Housing and Urban Development

Additional Waivers Granted to and Alternative Requirements for the State of Mississippi Under Public Laws 109–148 and 109–234; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5089–N–04]

Additional Waivers Granted to and Alternative Requirements for the State of Mississippi Under Public Laws 109–148 and 109–234

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers and alternative requirements.

SUMMARY: As described in the Supplementary Information section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice describes the additional waivers for the disaster recovery grants made to the State of Mississippi under the subject appropriations acts.

DATES: *Effective Date:* March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Acting Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–2684. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Taffet at (202) 708–1744. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The first federal fiscal year 2006 supplemental appropriation for the Community Development Block Grant (CDBG) program was in the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) which appropriated $11.5 billion for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the covered disasters.

The second 2006 supplemental appropriation was in Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234, approved June 15, 2006) which appropriated $5.2 billion in Community Development Block Grant funds also for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the covered disasters. The 2006 Acts each authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the State and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following additional waivers and alternative requirements for funds provided under either or both 2006 Acts are in response to requests from the State of Mississippi. (A waiver or alternative requirement will apply to assistance provided under either Act unless otherwise specified in this Notice.)

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.) (the 1974 Act), or the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 12721 et seq.).

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**.

Except as described in this and other notices applicable to these grants, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the appropriations acts cited above, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

Waiver Justification

In general, waivers already granted to the State of Mississippi and alternative requirements already specified for CDBG disaster recovery grant funds provided under Public Law 109–148 and Public Law 109–234 apply. The notices in which these prior waivers and alternative requirements applicable to Mississippi appear are 71 FR 7666, published February 13, 2006; 71 FR 34457, published June 14, 2006; 71 FR 62372, published October 24, 2006, and 71 FR 63337, published October 30, 2006.

The provisions of this Notice do not apply to funds provided under the annual CDBG program. The provisions provide additional flexibility in program design and implementation for the disaster recovery grants.

Housing incentives to resettle in Mississippi. The state may offer disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. The Department is waiving the 1974 Act and associated regulations to the extent necessary to make this use of grant funds eligible.

Eligibility—buildings for the general conduct of government. The State requested an eligibility waiver to allow it to fund buildings for the general conduct of government under the economic development programs in its Action Plan. The requested change will allow the State to assist construction, reconstruction, or rehabilitation of such buildings when the assistance meets the criteria in the Action Plan. HUD considered the state's request and agrees that it is consistent with the overall purposes of the 1974 Act for the state to be allowed to use the grant funds under this notice to fund critical projects involving repair of buildings for the general conduct of government that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

Public benefit for certain economic development activities. For its economic development programs, the state has requested a waiver of the public benefit standards for its economic development activities.

The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a

critical activity. The State has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, this Notice waives the public benefit standards for the cited activities, except that the State shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

Overall benefit to low- and moderate-income persons. The State of Mississippi has asked the Secretary to waive the requirement that at least 50 percent of the CDBG funds received by the state under the grant made under Public Law 109–148 be for activities that benefit persons of low and moderate income (see 71 FR 7666, published February 13, 2006, for the waiver granted under Public Law 109–148 to the original 70 percent requirement, and 71 FR 34457 and 71 FR 62372 for additional waivers specific to Mississippi). With this Notice, HUD is not replacing the October 24 waiver and alternative requirements but adding to them. (Substantial amendments to the State's program after the date of this notice may trigger further updates.)

In considering the waiver request, HUD applied the logic and principles used in the October 24 waiver to the economic development activities under the State's Economic Development program, approved December 19, 2006.

HUD also considered that the State has, to some extent, followed the Department's recommendation that it make a reasonable effort to address the recovery needs of its low- and moderate-income residents. The State designed its economic development grants and loans selection criteria to consider benefit to persons of low and moderate income. Further, it has funded Phase II of the homeowner assistance program and reconstruction of public housing, both designed to primarily or entirely benefit income eligible persons. However, the State has not yet published Action Plan amendments describing the uses of all grant funds.

HUD considered the data and the state's justification for its request. Considering that the State has not yet budgeted all of its grant funds in the Action Plan, it has a large amount of unbudgeted funds, it will be reallocating previously budgeted funds, and a substantial number of low- and moderate-income persons were impacted by the disaster, HUD decided that it still does not have enough information to conclude that the State has compelling need for a waiver of overall benefit for the entire grant at this time.

Based on the compelling need presented for the activities already included in the Action Plan for Disaster Recovery for the grant made under Pub. L. 109–148, HUD is modifying the waiver granted in the October 24 Notice to grant the state a waiver of the requirement that at least 50 percent of the supplemental CDBG grant funds provided under Pub. L. 109–148 primarily benefit persons of low and moderate income, to the extent necessary to permit Mississippi to carry out the activities contained in its Action Plan amendment dated December 15, 2006, provided that the State must give reasonable priority for the balance of its funds to activities that will primarily benefit persons of low and moderate income. HUD expects the grantee to maintain low- and moderate-income benefit documentation for each activity providing such benefit. This waiver of overall benefit does not cover activities added or modified under a substantial amendment to the activities mentioned in the Action Plan submission listed above.

Previously, the State agreed to examine other housing needs and to pursue other sources of funding to provide assistance for other compelling housing needs, such as for homeless and special needs populations, for low-income renters, and for uninsured low-income homeowners. HUD notes that Phase II addresses some of these needs. The Department expects the State to continue these efforts.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General note.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. Those governing the funds appropriated under Public Law 109–148 and already published in the **Federal Register**, including those in Notices 71 FR 7666, published February 13, 2006; 71 FR 34457, published June 14, 2006; 71 FR 62372, published October 24, 2006; and 71 FR 63337, published October 30, 2006.

b. Those governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 et seq. and 24 CFR part 570.

2. *Eligibility—buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow the state to use the grant funds under this notice to assist construction, reconstruction, or rehabilitation of buildings for the general conduct of government that the State has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

3. *Eligibility—incentives to resettle in Mississippi.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible incentives to resettle in Mississippi in accordance with the state's approved Action Plan and published program design.

4. *Public benefit standards for economic development activities.* For economic development activities designed to create or retain jobs or businesses, the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) average amount of assistance provided per job by activity or program, and (d) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

5. *Overall benefit.* 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(ii) with respect to the overall benefit requirement are waived to the extent necessary to permit Mississippi to carry out the activities contained in its March 31, June 28, and July 12, 2006, Action Plan submissions, and its submission dated December 15, 2006, provided that:

a. The State must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income; and

b. The State will maintain documentation of the low- and moderate-income benefit attributable to each assisted activity, if feasible, and report on such benefit to HUD as part of the regular quarterly reports.

6. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165, which expires August 31, 2007. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Dated: February 27, 2007.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E7–3831 Filed 3–5–07; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
March 6, 2007

Part V

The President

Proclamation 8111—To Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to the Dominican Republic and for Other Purposes

Federal Register
Vol. 72, No. 43
Tuesday, March 6, 2007

Presidential Documents

Title 3—

The President

Proclamation 8111 of February 28, 2007

To Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to the Dominican Republic and for Other Purposes

By the President of the United States of America

A Proclamation

1. On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement (the ''Agreement'') with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (the ''Agreement countries''). The Agreement was approved by the Congress in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''Act'') (Public Law 109–53, 119 Stat. 462) (19 U.S.C. 4011 note).

2. Section 201 of the Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Article 3.3 and Annex 3.3 (including the schedule of United States duty reductions with respect to originating goods) of the Agreement.

3. Consistent with section 201(a)(2) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP) on the date the Agreement enters into force with respect to that country.

4. Consistent with section 201(a)(3) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 *et seq.*) on the date the Agreement enters into force with respect to that country, subject to the exceptions set out in section 201(a)(3)(B) of the Act.

5. Consistent with section 213(b)(5)(D) of the CBERA, as amended by the United States-Caribbean Basin Trade Partnership Act (CBTPA) (Public Law 106–200), each Agreement country is to be removed from the enumeration of designated CBTPA beneficiary countries on the date the Agreement enters into force with respect to that country.

6. Section 1634(c)(2) of the Pension Protection Act of 2006 (Public Law 109–280) (29 U.S.C. 1001 note) authorizes the President to proclaim a reduction in the overall limit in the tariff preference level for Nicaragua provided in Annex 3.28 of the Agreement if the President determines that Nicaragua has failed to comply with a commitment under an agreement between the United States and Nicaragua with regard to the administration of such tariff preference level.

7. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (NAFTA) with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (Public Law 103–182) (the ''NAFTA Implementation Act''), incorporated in the Harmonized Tariff Schedule of the United States (HTS) the

tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

8. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

9. The United States and Mexico have agreed to modify certain NAFTA rules of origin. It is therefore necessary to modify the NAFTA rules of origin set out in Proclamation 6641.

10. Executive Order 11651 of March 3, 1972, as amended, established the Committee for the Implementation of Textile Agreements (CITA), consisting of representatives of the Departments of State, the Treasury, Commerce, and Labor, and the Office of the United States Trade Representative, with the representative of the Department of Commerce as Chairman, to supervise the implementation of textile trade agreements. Consistent with 3 U.S.C. 301, when carrying out functions vested in the President by statute and assigned by the President to CITA, the officials collectively exercising those functions are all to be officers required to be appointed by the President with the advice and consent of the Senate.

11. Section 604 of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2483), as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 201 of the Act, section 1634(c)(2) of the Pension Protection Act of 2006, section 202 of the NAFTA Implementation Act, section 301 of title 3, United States Code, and section 604 of the 1974 Act, and the Act having taken effect pursuant to section 107(a), do proclaim that:

(1) In order to provide generally for the preferential tariff treatment being accorded under the Agreement to the Dominican Republic, to provide certain other treatment to originating goods for the purposes of the Agreement, to provide tariff-rate quotas with respect to certain goods, to reflect the removal of the Dominican Republic from the enumeration of designated beneficiary developing countries for purposes of the GSP, to reflect the removal of the Dominican Republic from the enumeration of designated beneficiary countries for purposes of the CBERA and the CBTPA, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in Annexes I and II of Publication 3901 of the United States International Trade Commission, entitled Modifications to the Harmonized Tariff Schedule of the United States to Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to the Dominican Republic (Publication 3901), which is incorporated by reference into this proclamation.

(2) The CITA is authorized to exercise the function of the President under section 1634(c)(2) of the Pension Protection Act of 2006 of determining whether Nicaragua has failed to comply with a commitment under an agreement between the United States and Nicaragua with regard to the administration of the tariff preference level for Nicaragua provided in Annex 3.28 of the Agreement and, on making such a determination, to reduce the overall limit in the tariff preference level for Nicaragua provided in Annex 3.28 of the Agreement.

(3) In order to modify the rules of origin under the NAFTA, general note 12 to the HTS is modified as set forth in the Annex to this proclamation.

(4)(a) The amendments to the HTS made by paragraph (1) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in Annex I or II of Publication 3901.

(b) The amendments to the HTS made by paragraph (3) of this proclamation shall enter into effect on the date that the United States Trade Representative announces in the **Federal Register** that Mexico has completed its applicable domestic procedures to give effect to corresponding modifications to be applied to goods of the United States and shall, at that time, be effective with respect to goods of Mexico entered, or withdrawn from warehouse for consumption, on or after the date indicated in the Annex to this proclamation.

(c) Except as provided in paragraphs (4)(a) and (b) of this proclamation, this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 1, 2007.

(5) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

Billing code 3195–01–P

Annex

Modifications to General Note 12(t) of the Harmonized Tariff Schedule of the United States (HTS)

On the date that the United States Trade Representative announces in the *Federal Register* that Mexico has completed its applicable domestic procedures to give effect to corresponding modifications to be applied to goods of the United States and effective with respect to goods of Mexico covered under the terms of general note 12 to the tariff schedule, that are entered, or withdrawn from warehouse for consumption, on or after June 7, 2006, general note 12(t) to the HTS is modified by deleting tariff classification rule (TCR) 32 for chapter 62 and by inserting in lieu thereof the following new TCRs and subheading note:

"32. A change to heading 6206 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Mexico or of the United States.

Subheading rule: Men's or boys' boxer shorts of cotton shall be considered to originate if they are both cut and sewn or otherwise assembled in the territory of Mexico or of the United States and if the plain weave fabric of the outer shell, exclusive of waistbands, is wholly of one or more of the following:

(a) Fabrics of subheading 5208.41, yarn-dyed, with a fiber content of 100 percent cotton, 95 to 100 grams per square meter, of average yarn number 37 to 42 metric;

(b) Fabrics of subheading 5208.42, yarn-dyed, with a fiber content of 100 percent cotton, weighing not more than 105 grams per square meter, of average yarn number 47 to 53 metric;

(c) Fabrics of subheading 5208.51, printed, with a fiber content of 100 percent cotton, 93 to 97 grams per square meter, of average yarn number 38 to 42 metric;

(d) Fabrics of subheading 5208.52, printed, with a fiber content of 100 percent cotton, 112 to 118 grams per square meter, of average yarn number 38 to 42 metric;

(e) Fabrics of subheading 5210.11, greige, with a fiber content of 51 to 60 percent cotton, 49 to 40 percent polyester, 100 to 112 grams per square meter, of average yarn number 55 to 65 metric;

(f) Fabrics of subheading 5210.41, yarn-dyed, with a fiber content of 51 to 60 percent cotton, 49 to 40 percent polyester, 77 to 82 grams per square meter, of average yarn number 43 to 48 metric;

(g) Fabrics of subheading 5210.41, yarn-dyed, with a fiber content of 51 to 60 percent cotton, 49 to 40 percent polyester, 85 to 90 grams per square meter, of average yarn number 69 to 75 metric;

(h) Fabrics of subheading 5210.51, printed, with a fiber content of 51 to 60 percent cotton, 49 to 40 percent polyester, 107 to 113 grams per square meter, of average yarn number 33 to 37 metric;

(i) Fabrics of subheading 5210.51, printed, with a fiber content of 51 to 60 percent cotton, 49 to 40 percent polyester, 92 to 98 grams per square meter, of average yarn number 43 to 48 metric; or

(j) Fabrics of subheading 5210.51, printed, with a fiber content of 51 to 60 percent cotton, 49 to 40 percent polyester, 105 to 112 grams per square meter, of average yarn number 50 to 60 metric.

32A. A change to subheading 6207.11 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Mexico or of the United States.

32B. A change to subheadings 6207.19 through 6207.99 from any other chapter, except from heading 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Mexico or of the United States.

32C. A change to headings 6208 through 6210 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Mexico or the United States."

[FR Doc. 07–1068

Filed 3–5–07; 8:45 am]

Billing code 3190–01–C

Federal Register

Tuesday,
March 6, 2007

Part VI

The President

Proclamation 8112—Amending Proclamation 8031 of June 15, 2006, To Read, "Establishment of the Papahanaumokuakea Marine National Monument"

Federal Register
Vol. 72, No. 43
Tuesday, March 6, 2007

Presidential Documents

Title 3—

The President

Proclamation 8112 of February 28, 2007

Amending Proclamation 8031 of June 15, 2006, To Read, ''Establishment of the Papahanaumokuakea Marine National Monument''

By the President of the United States of America

A Proclamation

WHEREAS Proclamation 8031 of June 15, 2006, established the Northwestern Hawaiian Islands Marine National Monument;

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do amend Proclamation 8031 for the purpose of giving the monument a Native Hawaiian name and making the following conforming changes and corrections;

Section 1. The title of Proclamation 8031 is amended to read, ''Establishment of the Papahanaumokuakea Marine National Monument''.

Sec. 2. The phrase Northwestern Hawaiian Islands Marine National Monument is amended to read Papahanaumokuakea Marine National Monument, wherever it appears in Proclamation 8031.

Sec. 3. Under *Findings, Additional Findings for Native Hawaiian Practice Permits*, 2(e) is amended to read: *Any living monument resource harvested from the monument will be consumed or utilized in the monument.*

Sec. 4. The title of the map of the Monument accompanying Proclamation 8031 is amended to read, ''Papahanaumokuakea Marine National Monument'' and the word ''Sanctuary'' in the map is deleted wherever it appears and the word ''Monument'' is inserted in lieu thereof.

[FR Doc. 07–1077
Filed 3–5–07; 8:58 am]
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Rules and Regulations

Federal Register
Vol. 72, No. 43
Tuesday, March 6, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS–FV–06–0196; FV06–984–2 FIR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim final rule which increased the assessment rate established for the Walnut Marketing Board (Board) for the 2006–07 and subsequent marketing years from $0.0096 to $0.0101 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Shereen.Marino@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that increased the assessment rate established for the Board for the 2006–07 and subsequent marketing years from $0.0096 to $0.0101 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0096 per kernelweight of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 8, 2006, and unanimously recommended 2006–07 expenditures of $3,222,860 and an assessment rate of $0.0101 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,937,600. The assessment rate of $0.0101 per kernelweight pound of assessable walnuts is $0.0005 per pound higher than the 2005–06 rate. The higher assessment rate is necessary to cover increased expenses including increased salaries, operating expenses and research for the 2006–07 marketing year.

The following table compares major budget expenditures recommended by the Board for the 2005–06 and 2006–07 marketing years:

Budget expense categories	2005–06	2006–07
Administrative Staff/Field Salaries & Benefits	$360,000	$415,000
Travel/Board Expenses	80,000	75,000
Office Costs/Annual Audit	132,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	85,000	.....
Crop Estimate	95,000	100,000
Production Research Director	75,000	75,000
Production Research	500,000	650,000
Domestic Market Development	1,550,000	1,750,000
Reserve for Contingency	55,100	10,360

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 318,600,000 kernelweight pounds which should provide $3,217,860 in assessment income. Assessment income combined with interest income should allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The estimate for merchantable shipments is based on the California Agricultural Statistics Service's crop estimate for the crop year of 354,000 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (354,000 tons × 2,000 pounds/ton × .45).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2006–07 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are currently 44 handlers of California walnuts subject to regulation under the marketing order and approximately 5,150 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $6,500,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Current industry information suggests that 16 of the 44 handlers (36 percent) shipped over $6,500,000 of merchantable walnuts and could be considered large handlers by the SBA. Twenty-eight of the 44 walnut handlers (64 percent) shipped under $6,500,000 of merchantable walnuts and could be considered small handlers.

The number of large walnut growers (annual walnut revenue greater than $750,000) can be estimated as follows. According to the National Agricultural Statistics Service (NASS), the average yield per acre for 2003–05 is 1.567 tons. A grower with 353 acres with average yields would produce approximately 553 tons. The average of grower prices for 2003–05 (published by NASS) is $1,357 per ton. At that average price, the 553 tons produced on 353 acres would yield approximately $750,000 in annual revenue. The 2002 Agricultural Census indicated 56 walnut farms (just under one percent of the 7,025 walnut farmers in 2002) were 500 acres or larger. The 500 acre threshold in the census data is somewhat larger than the 353 acres that would produce $750,000 in revenue with average yields and average prices. Thus, it can be concluded that the number of large walnut farms in 2006 is still likely to be not much above one percent. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule continues in effect the action that increased the assessment rate established for the Board and collected from handlers for the 2006–07 and subsequent marketing years from $0.0096 to $0.0101 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2006–07 expenditures of $3,222,860 and an assessment rate of $0.0101 per kernelweight pound of assessable walnuts. The assessment rate of $0.0101 is $0.0005 higher than the 2005–06 rate. The quantity of assessable walnuts for the 2006–07 marketing year is estimated at 318,600,000 merchantable kernelweight pounds. Thus, the $0.0101 rate should provide $3,217,860 in assessment income. Assessment income combined with an anticipated interest income of $5,000 should be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2005–06 and 2006–07 marketing years:

Budget expense categories	2005–06	2006–07
Administrative Staff/Field Salaries & Benefits	$360,000	$415,000
Travel/Board Expenses	80,000	75,000
Office Costs/Annual Audit	132,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	85,000	.....
Crop Estimate	95,000	100,000
Production Research Director	75,000	75,000
Production Research	500,000	650,000
Domestic Market Development	1,550,000	1,750,000
Reserve for Contingency	55,100	10,360

Prior to arriving at this budget, the Board considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

According to NASS, the season average grower prices for years 2004 and 2005 were $1,390 and $1,520 per ton, respectively. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of between $.70 and $.76. Adjusting by a few cents above and below those prices ($0.67 to $0.79 per inshell pound) provides a reasonable price range within which the 2006–07 season average price is likely to fall. Dividing these inshell prices per pound by the 0.45 conversion factor designated in the order yields a 2006–07 price range estimate of $1.49 and $1.76 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0101 (per kernelweight pound) is divided by the low and high estimates of the price range and then multiplied by 100. The estimated assessment revenue for the 2006–07 marketing year as a percentage of total grower revenue would likely range between .7 and .6 percent.

This action continues in effect the action that increased the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on November 16, 2006 (71 FR 66645). Copies of the rule were also mailed by the Board's staff to all Board members and walnut handlers. In addition, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. The rule provided for a 60-day comment period, which ended on January 16, 2007, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Marketing agreements, Walnuts, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 984 which was published at 71 FR 66645 on November 16, 2006, is adopted as a final rule without change.

Dated: February 28, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–3818 Filed 3–5–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26709; Directorate Identifier 2006–NM–202–AD; Amendment 39–14968; AD 2007–05–07]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires inspecting the carbon-fiber reinforced plastic main landing gear (MLG) door to determine whether certain part numbers are installed. For airplanes having certain doors, this AD requires inspecting the MLG outboard door for cracks, play, and loose sealant/bolts/nuts, and related

investigative and corrective actions if necessary. This AD also requires, for airplanes having certain doors, modifying the rod bracket attachment of the MLG outboard door. This AD results from a report of a rod bracket of the MLG door detaching during flight. We are issuing this AD to detect and correct cracks in the rod bracket attachment bolts, which could result in the rod brackets detaching from the MLG door and blocking the proper functioning of the MLG.

DATES: This AD becomes effective April 10, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 10, 2007.

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

Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Fokker Model F.28 Mark 0070 and 0100 airplanes. That NPRM was published in the **Federal Register** on December 28, 2006 (71 FR 78099). That NPRM proposed to require inspecting the carbon-fiber reinforced plastic main landing gear (MLG) door to determine whether certain part numbers are installed. For airplanes having certain doors, that NPRM proposed to require inspecting the MLG outboard door for cracks, play, and loose sealant/bolts/nuts, and related investigative and corrective actions if necessary. That NPRM also proposed to require, for airplanes having certain doors, modifying the rod bracket attachment of the MLG outboard door.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections	2	$80	$0	$160	7	$1,120
Modification	6	80	1,066	1,546	7	10,822

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–05–07 Fokker Services B.V: Amendment 39–14968. Docket No. FAA–2006–26709; Directorate Identifier 2006–NM–202–AD.

Effective Date

(a) This AD becomes effective April 10, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of a rod bracket of the main landing gear (MLG) door detaching during flight. We are issuing this AD to detect and correct cracks in the rod bracket attachment bolts, which could result in the rod brackets detaching from the MLG door and blocking the proper functioning of the MLG.

Compliance

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

Inspections

(f) Within 9 months after the effective date of this AD, inspect the carbon-fiber reinforced plastic (CFRP) MLG doors to determine if any MLG door having a part number (P/N) D13312–401 through –410 inclusive is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the CFRP MLG doors can be conclusively determined from that review. If the CFRP MLG doors have any part number other than P/N D13312–401 through –410 inclusive installed, no further action is required by this AD.

(g) If any CFRP MLG door having any P/N D13312–401 through –410 inclusive is found during the inspection required by paragraph (f) of this AD: Within 9 months after the effective date of this AD, do a detailed inspection of the MLG outboard door for cracks, play, and loose sealant/bolts/nuts as specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005, and do all applicable related investigative and corrective actions, by doing all the applicable actions specified in Part 1 of the Accomplishment Instructions of the service bulletin, except as provided by paragraphs (i), (j), and (k) of this AD. Do all applicable related investigative and corrective actions before further flight.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Modification

(h) If any CFRP MLG door having any P/N D13312–401 through –410 inclusive is found during the inspection required by paragraph (f) of this AD: Within 12 months after the effective date of this AD, modify the MLG outboard door operating rod bracket attachment and do all applicable related investigative and corrective actions by doing all the applicable actions specified in Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005, except as provided by paragraph (i) of this AD. Do all applicable related investigative and corrective actions before further flight.

Exceptions to the Service Bulletin

(i) Where Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005, specifies to contact the manufacturer for repair, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(j) If any loose sealant or any delamination is found during any inspection required by paragraph (g) of this AD, before further flight, do the corrective action specified in paragraph C.(3) of Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005.

(k) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(m) Dutch airworthiness directive NL–2006–001, dated January 5, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, S.W., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on February 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3659 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Removal of an Obsolete Reference in Special Federal Aviation Regulation 50–2—Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This amendment removes an obsolete reference in Special Federal Aviation Regulation 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ. In section 9 of that SFAR, there is a ''Note'' that refers to an informational map of the Special Flight Rules Area (SFRA). This map is no longer available; however, there is an illustrational map of the SFRA in Part 93, Subpart U. Therefore, this technical amendment deletes the reference in SFAR 50–2, which is no longer needed and is confusing to the public.

DATES: *Effective Dates:* Effective on March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking (ARM–109), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202–267–9685); e-mail: *Linda.L.Williams@faa.gov.*

SUPPLEMENTARY INFORMATION: In January 2001(66 FR 1002) the FAA found it necessary to delay the implementation of the routes in the east end of the Canyon. Because this was initially difficult to explain in the regulations,

the FAA made available an informational map to assist the public in understanding the boundaries of the Grand Canyon's Special Flight Rules Area, or SFRA. The note says that the map is available on the Office of Rulemaking's website or by contacting that office.

Because an illustrational map of the SFRA is contained in Part 93, Subpart U, the FAA removes the reference to the map in SFAR 50–2. The illustrational map remains in Part 93 to give interested parties a general picture of the Grand Canyon SFRA.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Freight, Incorporation by reference, Reporting and recordkeeping requirements.

The Amendment

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 91 is amended as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. 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, 44704, 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).

■ 2. Amend Special Federal Aviation Regulation 50–2 by removing the ''Note'' at the end of section 9.

Special Federal Aviation Regulation 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ

* * * * *

Section 9 Termination date.

* * * * *

Note: [Removed]

Issued on February 26, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. E7–3810 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30540; Amdt. No. 3209]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed 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 March 6, 2007. 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 March 6, 2007.

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

For Examination—

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

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

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–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 Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. 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 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 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this

amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. 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 these 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 February 23, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part 97, is amended by amending 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:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35, and 97.37 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, LDA w/GS, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, MLS, TLS, GLS, WAAS PA, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, § 97.37 Takeoff Minima and Obstacle Departure Procedures. Identified as follows:

* * **Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
02/08/07	CA	FRESNO	FRESNO-CHANDLER EXECUTIVE	7/2739	VOR/DME OR GPS–C, AMDT 5.
02/08/07	CA	FRESNO	FRESNO-CHANDLER EXECUTIVE	7/2742	GPS RWY 12R, ORIG–A.
02/08/07	CA	FRESNO	FRESNO-CHANDLER EXECUTIVE	7/2743	NDB OR GPS–B, AMDT 7A.
02/08/07	CA	FRESNO	FRESNO-CHANDLER EXECUTIVE	7/2744	GPS RWY 30L, ORIG–A.
02/15/07	WY	CHEYENNE	CHEYENNE REGIONAL/JERRY OLSON FIELD.	7/3287	NDB RWY 27, AMDT 14.
02/15/07	WY	CHEYENNE	CHEYENNE REGIONAL/JERRY OLSON FIELD.	7/3288	VOR OR TACAN A, AMDT 10.
02/15/07	AK	ANCHORAGE	TED STEVENS ANCHORAGE INTL	7/3289	ILS OR LOC/DME RWY 7R, ORIG.
02/15/07	AK	FAIRBANKS	FAIRBANKS INTL	7/3290	ILS RWY 1L, AMDT 7.
02/15/07	AK	YAKUTAT	YAKUTAT	7/3291	ILS OR LOC/DME RWY 11, ORIG.
02/15/07	AK	FAIRBANKS	FAIRBANKS INTL	7/3295	ILS RWY 19R, AMDT 21A.
02/20/07	VA	WINCHESTER	WINCHESTER REGIONAL	7/3558	VOR/DME OR GPS–A, AMDT 4.

[FR Doc. E7–3681 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, and 774

[Docket No. 060117010–6010–01]

RIN 0694–AD47

Revisions and Clarifications of License Exception Availability, License Requirements and Licensing Policy for Certain Crime Control Items

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule removes the geographic restrictions on use of a license exception used to ship items to U.S. government agencies, applies those geographic restrictions on use of license exceptions to crime control software and technology, reclassifies thumbcuffs on the Commerce Control List, and restates and emphasizes BIS's policy of distinguishing crime control items from specially designed implements of torture for export control purposes.

DATES: This rule is effective March 6, 2007.

ADDRESSES: Comments may be submitted by e-mail to *publiccomments@bis.doc.gov*; by fax to (202) 482–3355; or on paper to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry

and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Refer to Regulatory Identification Number (RIN) 0694-AD47 in all comments. Comments on the information collection should also be sent to David Rostker, Office of Management and Budget Desk Officer; by e-mail to *david_rostker@omb.eop.gov*; or by fax to (202) 395–7285. Refer to Regulatory Identification Number (RIN) 0694–AD47 in all comments.

FOR FURTHER INFORMATION CONTACT: Steven B. Clagett, Director, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance (202) 482–4188.

SUPPLEMENTARY INFORMATION:

Background

The Export Administration Regulations (EAR) impose license requirements on certain items because of their potential use in crime control activities. These license requirements are maintained to support U.S. foreign policy to promote human rights. This rule revises the EAR to make certain shipments of crime control items consigned to and for the use of U.S. government agencies eligible for a license exception. It also clarifies and strengthens limits on use of License Exceptions for crime control items generally and clearly delineates between our export control policies regarding legitimate crime control items (a policy of reviewing license applications based on the human rights record in the destination country with some exceptions to the license requirements available in appropriate circumstances) and our policies regarding specially designed implements of torture (a general policy of denial of license applications and no license exceptions available). In addition to these changes, BIS is continuing to review the list of items restricted for crime control reasons to ensure that such controls keep pace with the technologies currently used by law enforcement. The specific changes made by this rule are described more fully below.

Specific Changes Made by This Rule

Clarification of the Application of the Restrictions in § 740.2(a)(4) to Software and Technology

This rule replaces the word ''commodities'' in paragraph (a)(4) of § 740.2 with the word ''items'' to make clear that the restrictions of paragraph (a)(4) on the use of License Exceptions to export or reexport crime control items apply to software and technology, as well as commodities.

Exemption of Exports and Reexports to and for the Official Use of the United States Government From the Restrictions of § 740.2(a)(4)

This rule revises paragraph (a)(4) of § 740.2 to permit the use of License Exception GOV for the export of items subject to § 742.7 of the EAR if consigned to and for the official use of any U.S. government agency, worldwide. Although this change applies to any U.S. Government agency, BIS is making it at this time because of the need to supply U.S. armed forces in locations that, prior to publication of this rule, would be subject to the geographic restriction on use of License Exceptions for crime control items. This rule does not expand the scope of eligible recipients under License Exception GOV. In particular, this rule does not make shipments consigned to contractors employed by the U.S. government eligible for License Exception GOV. This rule also reformats paragraph (a)(4) while retaining its pre-existing exemptions for shipments to NATO countries, Australia, New Zealand and Japan as well as certain shipments of shotguns for personal use.

Clarification of Policy Regarding Specially Designed Implements of Torture

This rule creates a new paragraph (a)(10) in § 740.2. The new paragraph (a)(10) expressly prohibits the use of License Exceptions for all commodities subject to the license requirements of § 742.11 of the EAR (specially designed implements of torture and some related commodities).

Clarification of the Applicability of § 742.11 to All Commodities in ECCN 0A983

This rule revises the heading and paragraph (a) of § 742.11 of the EAR to make clear that the license requirements and licensing policy of that section apply to all commodities that are controlled by Export Control Classification Number (ECCN) 0A983. Such was BIS's interpretation prior to publication of this rule and BIS does not view this as a substantive change. However, prior to publication of this rule, ECCN 0A983 referred to ''specially designed implements of torture and thumbscrews; and parts and accessories, n.e.s.,'' whereas § 742.11 referred to ''specially designed implements of torture controlled by ECCN 0A983.'' This rule makes the wording of the headings of § 742.11 and ECCN 0A983 identical and revises the license requirements section of § 742.11 to refer to ''any commodity controlled by ECCN 0A983.''

Placement of Thumbcuffs in ECCN 0A983 To Reflect Licensing Policy

This rule removes thumbcuffs from ECCN 0A982 and adds them to ECCN 0A983. BIS's licensing policy is generally to deny applications to export or reexport thumbcuffs. Controlling them under ECCN 0A983, for which § 742.11 of the EAR provides a general policy of denial, more accurately states BIS's licensing policy than does controlling them under ECCN 0A982, for which § 742.7 provides for favorable case-by-case consideration ''unless there is civil disorder in the country or region or unless there is evidence that the government of the importing country may have violated internationally recognized human rights.'' In addition, this change will make thumbcuffs ineligible for any License Exception under any circumstances. This rule also adds a ''related controls'' note to ECCN 0A982 to guide readers to ECCN 0A983 for controls on thumbcuffs.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA).

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 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 of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS estimates that this rule will reduce the number of multi-purpose application forms that must be filed by about 100 per year.

3. This rule does not contain policies with Federalism implications as that

term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, 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 rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity 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 not applicable.

List of Subjects

15 CFR Part 740

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, parts 740, 742 and 774 of the Export Administration Regulations (15 CFR 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 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 3, 2006, 71 FR 44551 (August 7, 2006).

■ 2. In § 740.2, revise paragraph (a)(4) and add paragraph (a)(10) to read as follows:

§ 740.2 Restrictions on all License exceptions.

(a) * * *

(4) The item being exported or reexported is subject to the license requirements described in § 742.7 of the EAR and the export or reexport is not:

(i) Being made to Australia, Japan, New Zealand, or a NATO (North Atlantic Treaty Organization) member state (see NATO membership listing in § 772.1 of the EAR);

(ii) Authorized by § 740.11(b)(2)(ii) (official use by personnel and agencies of the U.S. government); or

(iii) Authorized by § 740.14(e) of the EAR (certain shotguns and shotgun shells for personal use).

* * * * *

(10) The commodity being exported or reexported is subject to the license requirements of § 742.11 of the EAR.

* * * * *

PART 742—[AMENDED]

■ 3. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 4. In § 742.11, revise the heading and paragraph (a) to read as follows:

§ 742.11 Specially designed implements of torture, thumbscrews, and thumbcuffs; and parts and accessories, n.e.s.

(a) *License Requirements.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, a license is required to export any commodity controlled by ECCN 0A983 to all destinations including Canada.

* * * * *

PART 774—[AMENDED]

■ 5. The authority citation for part 774 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); 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 3, 2006, 71 FR 44551 (August 7, 2006).

Supplement No. 1 to Part 774—[Amended]

■ 6. In Supplement No. 1 to Part 774, Category 0, Export Control Classification Number 0A982, revise the heading and the ''Related Controls'' paragraph in the ''List of Items Controlled'' section to read as follows:

0A982 Restraint devices, including leg irons, shackles, and handcuffs; straight jackets, plastic handcuffs; and parts and accessories, n.e.s.

* * * * *

List of Items Controlled

Unit * * *

Related Controls: Thumbcuffs are controlled under ECCN 0A983.

* * * * *

Supplement No. 1 to Part 774—[Amended]

■ 7. In Supplement No. 1 to Part 774, Category 0, Export Control Classification Number 0A983, revise the heading to read as follows:

0A983 Specially designed implements of torture, thumbscrews, and thumbcuffs; and parts and accessories, n.e.s.

* * * * *

Dated: February 26, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–3895 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 358

[Docket No. 2005N–0448]

RIN 0910–AF49

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products Containing Coal Tar and Menthol for Over-the-Counter Human Use; Amendment to the Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph (FM) for over-the-counter (OTC) dandruff, seborrheic dermatitis, and psoriasis drug products to include the combination of 1.8 percent coal tar solution and 1.5 percent menthol in a shampoo drug product to control dandruff. FDA did not receive any comments or data in response to its previously proposed rule to include this combination. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: *Effective Date*: This regulation is effective April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Michael L. Chasey, Center for Drug

Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, MS 5411, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 4, 1979 (44 FR 69768), FDA published an advance notice of proposed rulemaking (ANPR) to establish a monograph for OTC external analgesic drug products. The ANPR includes the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Topical Analgesic Panel). The Topical Analgesic Panel concluded that menthol is safe and effective for use as an OTC external antipruritic (anti-itch) ingredient in concentrations of 1.0 percent or less and as an external counterirritant in concentrations exceeding 1.25 percent up to 16 percent. In the **Federal Register** of February 8, 1983 (48 FR 5852), FDA's proposed monograph, or tentative final monograph (TFM), for OTC external analgesic drug products included menthol as an antipruritic ingredient at concentrations from 0.1 percent to 1.0 percent.

In the **Federal Register** of December 3, 1982 (47 FR 54646), FDA published an ANPR to establish a monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products. The ANPR includes the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Miscellaneous External Panel) concerning OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis. The Miscellaneous External Panel recommended coal tar preparations as safe and effective for use as shampoos for controlling dandruff. The Miscellaneous External Panel also concluded that menthol is safe at concentrations of 0.04 to 1.5 percent, but that there were insufficient effectiveness data to include menthol in the monograph for controlling dandruff. The Miscellaneous External Panel further noted that menthol's activity to temporarily relieve itching should not be considered the same as control of dandruff.

In the **Federal Register** of July 30, 1986 (51 FR 27346), FDA published its TFM for OTC dandruff, seborrheic dermatitis, and psoriasis drug products. No new information was submitted for menthol. Therefore, menthol was not included in the TFM.

In the **Federal Register** of December 4, 1991 (56 FR 63554), FDA issued a FM for OTC dandruff, seborrheic dermatitis, and psoriasis drug products (21 CFR part 358, subpart H). The FM includes a discussion of a study comparing two shampoo formulations for relief of scalp itching associated with dandruff. One formulation contained the combination of 9 percent coal tar solution and 1.5 percent menthol and the other contained coal tar as a single ingredient. FDA determined that the study had a number of major design flaws. For example, the study did not include a group of subjects who only used menthol. Thus, the individual contributions of coal tar and menthol to the effectiveness of the combination product could not be determined from the study. In addition, the statistical analysis of the study results was not valid. FDA concluded that the study did not demonstrate that the combination product offers any advantage over the product containing only coal tar. Thus, FDA concluded that the coal tar-menthol combination is not generally recognized as safe and effective (GRASE) for the control of dandruff based on the study. This combination was placed in a list of active ingredients found not to be GRASE (21 CFR 310.545(d)(3)).

II. Amendment of the Dandruff, Seborrheic Dermatitis, and Psoriasis FM

In 1993, FDA received a petition containing new data in support of the combination of coal tar and menthol for the relief of scalp itching associated with dandruff. This new study addressed the concerns raised by FDA with the original study in the FM. The new study was a three-arm study, so the effectiveness of the individual ingredients could be properly compared to the combination product. In addition, the appropriate statistics were used to analyze the data. The study shows that both menthol alone as well as the combination of menthol and coal tar provide greater itch relief than coal tar alone at 5, 15, and 30 minutes after shampooing and that the differences at each timepoint were statistically significant. Although menthol alone provides itch relief, FDA has no data to support menthol as a single active ingredient for general relief and control of the non-pruritic symptoms of dandruff (e.g., scaling). Thus, in the **Federal Register** of December 9, 2005 (70 FR 73178), FDA published a proposed rule (PR) to amend the FM for OTC dandruff, seborrheic dermatitis, and psoriasis drug products to include the combination of 1.8 percent coal tar solution and 1.5 percent menthol as GRASE in a shampoo drug product to control dandruff and relieve scalp itching associated with dandruff.

FDA did not receive any comments or data in response to the proposed amendment to the final rule. Therefore, in this final rule, FDA is adding the combination of 1.8 percent coal tar and 1.5 percent menthol to § 358.720 (21 CFR 358.720) and removing the combination from § 310.545(d)(3) (21 CFR 310.545(d)(3)). As proposed, FDA is also adding new § 358.760 (21 CFR 358.760) to describe the labeling for this combination. It reads as follows:

- Statement of identity (§ 358.760(a)(1)): ''dandruff/anti-itch shampoo'' or ''antidandruff/anti-itch shampoo''
- Indication (§ 358.760(b)(1) and (b)(2)): ''[bullet] [select one of the following: 'for relief of' or 'controls'] the symptoms of dandruff [bullet] [select one of the following: 'additional' or 'extra'] relief of itching due to dandruff''
- Warnings (§ 358.760(c)(1) and (c)(2)): those listed in § 358.750(c)(1) and (c)(2)
- Directions (§ 358.760(d)(1)): ''[bullet] wet hair [bullet] apply shampoo and work into a lather [bullet] rinse thoroughly [bullet] for best results, use at least twice a week or as directed by a doctor''

Any OTC dandruff, seborrheic dermatitis, or psoriasis drug product containing this combination of ingredients that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule and is not in compliance with the regulations is subject to regulatory action.

FDA is adding the combination of 1.8 percent coal tar and 1.5 percent menthol and corresponding labeling and is also revising § 358.720(a) to correct an error. Section 358.720(a) references ''sulfur identified in § 358.710(a)(6),'' but the paragraph should reference ''sulfur identified in § 358.710(a)(7).'' This error was introduced when micronized selenium sulfide was added to the monograph and § 358.710(a) was renumbered (58 FR 17554 and 59 FR 4000).

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). 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, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.''

FDA concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. This final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed in this section, FDA has determined that this final rule will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule because the rule is not expected to result in any 1-year expenditure that would meet or exceed $100 million adjusted for inflation. The current threshold after adjustment for inflation is about $118 million, using the most current (2004) Implicit Price Deflator for the Gross Domestic Product.

The purpose of this final rule is to allow an additional combination of active ingredients for OTC antidandruff drug products. Manufacturers can reformulate their OTC antidandruff drug products that contain coal tar to include the combination or can manufacture a new combination product containing coal tar and menthol. Reformulating or manufacturing a new combination product might result in additional product sales but, in either case, is optional. Thus, this final rule will not impose a significant economic burden on affected entities. Therefore, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

IV. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

V. Environmental Impact

FDA has determined under 21 CFR 25.31(a) 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.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule will have a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 751 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379r) is an express preemption provision. Section 751(a) of the act (21 U.S.C. 379r(a)) provides that:

> * * * no State or political subdivision of a State may establish or continue in effect any requirement—* * * (1) that relates to the regulation of a drug that is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A); and (2) that is different from or in addition to, or that is otherwise not identical with, a requirement under this Act, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*).

Currently, this provision operates to preempt States from imposing requirements related to the regulation of nonprescription drug products. (See Section 751(b) through (e) of the act for the scope of the express preemption provision, the exemption procedures, and the exceptions to the provision.)

This final rule amends the FM for OTC dandruff, seborrheic dermatitis, and psoriasis drug products to include the combination of 1.8 percent coal tar solution and 1.5 percent menthol in a shampoo drug product to control dandruff. Although this final rule has a preemptive effect, in that it precludes States from promulgating requirements related to labeling for OTC dandruff, seborrheic dermatitis, and psoriasis drug products that are different from or in addition to, or not otherwise identical with a requirement in the final rule, this preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act displaces both State legislative requirements and State common law duties. We also note that even where the express preemption provision is not applicable, implied pre-emption may arise (see *Geier* v. *American Honda Co.*, 529 US 861 (2000)).

FDA believes that the preemptive effect of the final rule is consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.''

On January 18, 2007, FDA's Division of Federal and State Relations provided notice via fax and email transmission to elected officials of State governments and their representatives of national organizations. The notice provided the States with further opportunity for input on the rule. It advised the States of the publication of the December 9, 2005, proposed rule and encouraged State and local governments to review the notice and to provide any comments to the docket (2005N–0448) by a date 30 days from the date of the letter (i.e., by February 20, 2007), or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in the above numbered docket.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 358

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310 and 358 are amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by revising paragraph (d)(3) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

* * * * *

(d) * * *

(3) December 4, 1992, for products subject to paragraph (a)(7) of this section that contain menthol as an antipruritic in combination with the antidandruff ingredient coal tar identified in § 358.710(a)(1) of this chapter. This section does not apply to products allowed by § 358.720(b) of this chapter after April 5, 2007.

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 3. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 4. Section 358.720 is revised to read as follows:

§ 358.720 Permitted combinations of active ingredients.

(a) *Combination of active ingredients for the control of dandruff.* Salicylic acid identified in § 358.710(a)(4) may be combined with sulfur identified in § 358.710(a)(7) provided each ingredient is present within the established concentration and the product is labeled according to § 358.750.

(b) *Combination of control of dandruff and external analgesic active ingredients.* Coal tar identified in § 358.710(a)(1) may be used at a concentration of 1.8 percent coal tar solution, on a weight to volume basis, in combination with menthol, 1.5 percent, in a shampoo formulation provided the product is labeled according to § 358.760.

■ 5. New § 358.760 is added to read as follows:

§ 358.760 Labeling of permitted combinations of active ingredients for the control of dandruff.

The statement of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(1) *Combinations of control of dandruff and external analgesic active ingredients in § 358.720(b).* The label states ''dandruff/anti-itch shampoo'' or ''antidandruff/anti-itch shampoo''.

(2) [Reserved]

(b) *Indications.* The labeling of the product states, under the heading ''Uses,'' one or more of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the uses that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *Combinations of control of dandruff and external analgesic active ingredients in § 358.720(b).* The labeling states ''[bullet] [select one of the following: 'for relief of' or 'controls'] the symptoms of dandruff [bullet] [select one of the following: 'additional' or 'extra'] relief of itching due to dandruff''.

(2) The following terms or phrases may be used in place of or in addition to the words ''for the relief of'' or ''controls'' in the indications in paragraph (b)(1) of this section: ''fights,'' ''reduces,'' ''helps eliminate,'' ''helps stop,'' ''controls recurrence of,'' ''fights recurrence of,'' ''helps prevent recurrence of,'' ''reduces recurrence of,'' ''helps eliminate recurrence of,'' ''helps stop recurrence of.''

(3) The following terms may be used in place of the words ''the symptoms of'' in the indication in paragraph (b)(1) of this section: ''scalp'' (select one or more of the following: ''itching,'' ''irritation,'' ''redness,'' ''flaking,'' ''scaling'') ''associated with''.

(c) *Warnings.* The labeling of the product states, under the heading ''Warnings,'' the warning(s) listed in § 358.750(c)(1) and (c)(2).

(d) *Directions.* The labeling of the product states, under the heading ''Directions,'' directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (d). When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and may not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient.

(1) *Combinations of control of dandruff and external analgesic active ingredients in § 358.720(b).* The labeling states ''[bullet] wet hair [bullet] apply shampoo and work into a lather [bullet] rinse thoroughly [bullet] for best results, use at least twice a week or as directed by a doctor''.

(2) [Reserved]

Dated: February 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–3808 Filed 3–5–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 99

[Public Notice 5705]

RIN 1400–AC–20

Intercountry Adoption—Reporting on Non-Convention and Convention Adoptions of Emigrating Children

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department), with the joint review and approval of the Department of Homeland Security (DHS), is issuing a new rule to implement the requirement in the Intercountry Adoption Act of 2000 (the IAA) to establish a Case Registry for, *inter alia,* emigrating children. This final rule imposes reporting requirements on adoption service providers, including governmental authorities who provide adoption services, in cases involving adoptions of children who will emigrate from the United States. These reporting obligations apply to all intercountry adoptions, regardless of whether they are covered under the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention). This final rule, although issued with the joint review and approval of DHS pursuant to section 303(d) of the IAA, only adds a new section to the

Department's Convention regulations; no amendments or additions are made to DHS regulations.

DATES: This rule is effective April 5, 2007. Information about the date the Convention will enter into force with respect to the United States is provided in 22 CFR 96.17.

FOR FURTHER INFORMATION CONTACT: Anna Mary Coburn at 202–736–9081. Hearing-or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Convention is a multilateral treaty that provides a framework for the adoption of children habitually resident in one country that is a party to the Convention by persons habitually resident in another country that is also a party to the Convention. The Convention establishes procedures to be followed in these intercountry adoption cases and imposes safeguards to protect the best interests of children. When the Convention enters into force with respect to the United States, it will apply to the United States as both a country of origin (outgoing cases, i.e., where children are emigrating from the United States to a foreign country) and a receiving country (incoming cases, i.e., where children are immigrating to the United States from a foreign country).

The implementing legislation for the Convention is the IAA. The IAA requires the Department and DHS to establish a Case Registry to track all intercountry adoption cases: Convention and non-Convention; emigrating and immigrating cases. The Department is, with the joint review and approval of DHS, promulgating this final rule to require adoption service providers that provide adoption services in intercountry adoption cases involving a child emigrating from the United States (including governmental authorities who provide such adoption services) to report certain information to the Department for incorporation into the Case Registry.

II. The Final Rule

The Department issued a proposed rule for public comment (See Proposed Rule on Intercountry Adoption—Reporting on Non-Convention and Convention Adoptions of Emigrating Children, 71 FR 54001–54005, September 13, 2006). No public comments were received. The Department is now issuing the final rule as it was proposed. No changes have been made to the text of the rule, except that the Department has made certain technical clarifications, including changing the § 99.2 heading and § 99.2(d)(1) to correct any misimpression that the rule applies only to U.S. national children and changing § 99.2(a) to clarify that the reporting requirements do not take effect until the Convention has entered into force for the United States.

III. Regulatory Review

A. Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by Federal agencies that affect the public (5 U.S.C. 533), the Department published this rule for public comment.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612 and Executive Order 13272, section 3(b), the Department of State has evaluated the effects of this action on small entities, and has determined, and hereby certifies, pursuant to 5 U.S.C. 605(b), that it would not have a significant economic impact on a substantial number of small entities. Overall, the number of outgoing intercountry adoption cases is expected to be very small in comparison with the number of incoming cases. Consequently, very few ASPs that are small entities will also be involved in outgoing cases. Moreover, the rule requires only extremely limited reporting requirements for outgoing cases. Thus, the Department does not believe the economic impact on small entities will be significant. The Department received no public comments on the rule's impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. The rule would not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

E. Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has 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. This regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

F. Executive Order 12866: Regulatory Review

The Department of State does not consider this rule to be a ''significant regulatory action'' within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

G. Executive Order 12988: Civil Justice Reform

The Department has reviewed this rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

H. The Paperwork Reduction Act (PRA) of 1995

Under the PRA, 42 U.S.C. 3501 *et seq.*, agencies are generally required to submit to the Office of Management and

Budget (OMB) for review and approval information collection requirements imposed on ''persons'' as defined in the PRA. Section 503(c) of the IAA exempts from the PRA information collection ''for purposes of sections 104, 202(b)(4), and 303(d)'' of the IAA ''or for use as a Convention record as defined'' in the IAA. All information collections that relate to outgoing non-Convention cases will be collections made for the purposes of section 303(d) of the IAA, and thereby are exempt. All information collections that relate to outgoing Convention cases will be Convention records as defined in and subject to the preservation requirements of 22 CFR part 98, which implements section 401(a) of the IAA. Additionally, the majority of information collection imposed on persons pursuant to this rule, with respect to both Convention and non-Convention cases, will be for the purposes of obtaining information for congressional reports required under section 104 of the IAA. Accordingly, the Department has concluded that the PRA does not apply to information collected from the public under this rule.

List of Subjects in 22 CFR Part 99

Adoption and foster care; International agreements; Reporting and recordkeeping requirements.

■ Accordingly, the Department adds new part 99 to title 22 of the CFR, chapter I, subchapter J, to read as follows:

PART 99—REPORTING ON CONVENTION AND NON-CONVENTION ADOPTIONS OF EMIGRATING CHILDREN

Sec.
99.1 Definitions.
99.2 Reporting requirements for adoption cases involving children emigrating from the United States.
99.3 [Reserved].

Authority: The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

§ 99.1 Definitions.

As used in this part, the term:

(a) *Convention* means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993.

(b) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

§ 99.2 Reporting requirements for adoption cases involving children emigrating from the United States.

(a) Once the Convention has entered into force for the United States, an agency (including an accredited agency and temporarily accredited agency), person (including an approved person), public domestic authority, or other adoption service provider providing adoption services in a case involving the emigration of a child from the United States must report information to the Secretary in accordance with this section if it is identified as the reporting provider in accordance with paragraph (b) of this section.

(b) In a Convention case in which an accredited agency, temporarily accredited agency, or approved person is providing adoption services, the primary provider is the reporting provider. In any other Convention case, or in a non-Convention case, the reporting provider is the agency, person, public domestic authority, or other adoption service provider that is providing adoption services in the case, if it is the only provider of adoption services. If there is more than one provider of adoption services in a non-Convention case, the reporting provider is the one that has child placement responsibility, as evidenced by the following factors:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birthparent or other legal guardian for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with a foreign government or its designees with regard to arranging an adoption; or

(4) Receiving information from, or sending information to a foreign country about a child that is under consideration for adoption.

(c) A reporting provider, as identified in paragraph (b) of this section, must report the following identifying information to the Secretary for each outgoing case within 30 days of learning that the case involves emigration of a child from the United States to a foreign country:

(1) Name, date of birth of child, and place of birth of child;

(2) The U.S. State from which the child is emigrating;

(3) The country to which the child is immigrating;

(4) The U.S. State where the final adoption is taking place, or the U.S. State where legal custody for the purpose of adoption is being granted and the country where the final adoption is taking place; and

(5) Its name, address, phone number, and other contact information.

(d) A reporting provider, as identified in paragraph (b) of this section, must report any changes to information previously provided as well as the following milestone information to the Secretary for each outgoing case within 30 days of occurrence:

(1) Date case determined to involve emigration from the United States (generally the time the child is matched with adoptive parents);

(2) Date of U.S. final adoption or date on which custody for the purpose of adoption was granted in United States;

(3) Date of foreign final adoption if custody for purpose of adoption was granted in the United States, to the extent practicable; and

(4) Any additional information when requested by the Secretary in a particular case.

§ 99.3 [Reserved].

Dated: December 18, 2006.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

Dated: February 2, 2007.

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

[FR Doc. E7–3684 Filed 3–5–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–07–005]

RIN 1625–AA09

Drawbridge Operation Regulations; Sacramento River, at Isleton, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Isleton Drawbridge across the Sacramento River, mile 18.7, at Isleton, CA. This deviation allows for a 12-hour notice for openings. The deviation is necessary for the bridge owner, the California Department of Transportation (Caltrans), to coordinate vessel traffic with their scheduled critical maintenance and operating upgrades.

DATES: This deviation is effective from 12:01 a.m. on April 21, 2007 through 11:59 p.m. on May 25, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpw), Eleventh Coast Guard District, Building 50–2, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: Caltrans requested a temporary change to the operation of the Isleton Drawbridge, mile 18.7, Sacramento River, at Isleton, CA. The Isleton Drawbridge navigation span provides a vertical clearance of 13 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal between 6 a.m. and 10 p.m. from May 1 through October 31, and between 9 a.m. and 5 p.m. from November 1 through April 30. At all other times, it opens on signal if at least four hours notice is given as required by 33 CFR 117.189. Navigation on the waterway is recreational, search and rescue and commercial traffic hauling materials for levee repair. Caltrans requested a change to the 12-hour notice for openings from 12:01 a.m. on April 21, 2007 through 11:59 p.m. on May 25, 2007. During this time the control house will be replaced, motors refurbished, and operating machinery will be upgraded, resulting in manual control of the drawspan. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary rule were raised. Vessels that can transit the bridge while in the closed-to-navigation position may continue to do so at any time.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 23, 2007.

J.A. Breckenridge,

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

[FR Doc. E7–3802 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–07–004]

RIN 1625-AA09

Drawbridge Operation Regulations; Sacramento River, at Paintersville, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Paintersville Drawbridge across the Sacramento River, mile 33.4, at Paintersville, CA. This deviation allows for a 12-hour notice for openings. The deviation is necessary for the bridge owner, the California Department of Transportation (Caltrans), to coordinate vessel traffic with their scheduled critical maintenance and operating upgrades.

DATES: This deviation is effective from 12:01 a.m. on March 9, 2007 through 11:59 p.m. on April 11, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpw), Eleventh Coast Guard District, Building 50–2, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: Caltrans requested a temporary change to the operation of the Paintersville Drawbridge, mile 33.4, Sacramento River, at Paintersville, CA. The Paintersville Drawbridge navigation span provides a vertical clearance of 24 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal between 6 a.m. and 10 p.m. from May 1 through October 31, and between 9 a.m. and 5 p.m. from November 1 through April 30. At all other times, it opens on signal if at least four hours notice is given as required by 33 CFR 117.189. Navigation on the waterway is recreational, search and rescue and commercial traffic hauling materials for levee repair. Caltrans requested a change to the 12-hour notice for openings from 12:01 a.m. on March 9, 2007 through 11:59 p.m. on April 11, 2007. During this time the control house will be replaced, motors refurbished, and operating machinery will be upgraded. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary rule were raised. Vessels that can transit the bridge while in the closed-to-navigation position may continue to do so at any time.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 23, 2007.

J.A. Breckenridge,

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

[FR Doc. E7–3809 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2005–21323]

RIN–2126–AA91

Parts and Accessories Necessary for Safe Operation: Surge Brake Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations to allow the use of automatic hydraulic inertia brake systems (surge brakes) on trailers when the ratios of gross vehicle weight ratings (GVWR) for the towing-vehicle and trailer are within certain limits. A surge brake is a self-contained permanently closed hydraulic brake system activated in response to the braking action of the towing vehicle. The amount of braking force developed by the trailer surge-brake system is proportional to the ratio of the towing vehicle to trailer weight and deceleration rate of the towing vehicle. This action is in response to a petition for rulemaking from the Surge Brake Coalition (Coalition).

DATES: *Effective Date:* April 5, 2007.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time, or go to Room PL–401 on the plaza level of the Nassif

Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–0676, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 9 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This Final Rule is organized as follows:

I. Legal Basis for the Rulemaking
II. Background
A. Current Regulatory Environment
B. Regulatory History
C. Petition
D. Analysis of Petition
E. Notice of Proposed Rulemaking (NPRM)
III. Discussion of Comments to NPRM
A. Comments Supporting
B. Comments Opposing
IV. Summary
V. Regulatory Analyses and Notices
VI. Regulatory Language for the Final Rule

I. Legal Basis for the Rulemaking

This rule is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935 provides that ''[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 31502(b)].

The amendments to 49 CFR part 393 adopted today deal directly with the ''safety of * * * equipment of[ ] a motor carrier'' [sec. 31502(b)(1)] and the ''standards of equipment of[ ] a motor private carrier * * *'' [sec. 31502(b)(2)]. The adoption and enforcement of rules relating to brakes on commercial vehicles was clearly authorized by the Motor Carrier Act of 1935. This rule rests squarely on that authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.'' Although this authority is very broad, the Act also includes specific requirements: ''At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' [49 U.S.C. 31136(a)].

This rule focuses primarily on the mandate of sec. 31136(a)(1) that commercial motor vehicles (CMVs) be ''equipped * * * and operated'' safely. FMCSA has determined that surge brakes can safely be allowed on trailers operating in interstate commerce under the conditions set forth in this final rule. Sections 31136(a)(2) and 31136(a)(4) deal with the safety and health effects, respectively, of the operational responsibilities imposed on CMV drivers. The Agency has concluded that operating a combination vehicle that includes a surge-braked trailer meeting the requirements of this rule would neither impair a driver's ability to operate safely nor adversely affect the driver's health. Finally, sec. 31136(a)(3) deals almost exclusively with a driver's ''physical condition,'' i.e., medical status. That subject is not specifically addressed in this rule, and the surge-brake provisions adopted today would not affect a driver's physical condition.

Before prescribing any regulations, FMCSA must also consider the ''costs and benefits'' of its proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the regulatory analysis for this rule filed separately in the docket.

II. Background

A. Regulatory History

The National Highway Traffic Safety Administration (NHTSA) has a legislative mandate under Title 49 of the United States Code, Chapter 301, Motor Vehicle Safety, to issue Federal Motor Vehicle Safety Standards (FMVSS) and Regulations to which manufacturers of motor vehicles must conform; manufacturers must certify that their vehicles and equipment comply with the FMVSSs. These Federal safety standards are regulations written in terms of minimum safety performance requirements for motor vehicles or equipment. These requirements are specified in such a manner that the public is protected against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles and is also protected against unreasonable risk of death or injury in the event crashes do occur.

FMVSS No. 121, ''Air brake systems,'' specifies performance and equipment requirements for trucks, buses, and trailers equipped with air brake systems, including air-over-hydraulic brake systems, to ensure safe braking performance under normal and emergency conditions.[1] However, there are no requirements in FMVSS No. 121, or any of the other FMVSSs, relating to the performance of surge brakes, electric brakes, or parking brakes on trailers.

Whereas the FMVSSs—other than FMVSS No. 121—do not specify performance requirements for trailer braking, Section 393.40 of the FMCSRs requires each CMV to have brakes adequate to stop and hold the vehicle or combination of motor vehicles. Trailer braking performance is specified in Section 393.52(d) of the FMCSRs, and generally requires property-carrying vehicles and combinations of property-carrying vehicles used in interstate commerce be able to stop within 40 feet from 20 miles-per-hour (mph) on a hard surface that is substantially level, dry, smooth, and free of loose material. However, any semitrailer, trailer, or pole trailer with a gross weight of 3,000 pounds or less is not required to be equipped with brakes if the axle weight of the towed vehicle does not exceed 40 percent of the sum of the axle weights of the towing vehicle. Thus, a combination operating in interstate commerce would not need brakes on a 3,000-pound trailer when pulled by a 7,500-pound or heavier towing vehicle (49 CFR 393.42(b) (3)–(4)). In these cases, the vehicle combination must be able to stop within 35 feet from 20 mph, and the service brakes of the towing vehicle alone are sufficient to stop the combination.

In 1952, the two requirements regarding brakes that are the subject of this rulemaking were included in the FMCSRs. Section 393.48 of the FMCSRs requires that all brakes with which a motor vehicle is equipped be capable of operating at all times. In addition, § 393.49 requires that a single application valve must, when applied, operate all the service brakes on the motor vehicle or combination of motor vehicles. While electric brakes on trailers used in interstate commerce are considered to meet the requirements of §§ 393.48 and 393.49, and have been in use for many years, regulatory guidance issued by the Agency in 1975 (40 FR

[1] Certain trailers and trucks are exempted depending on width, axle GVWR, maximum speed, and unloaded vehicle weight.

50671, 50688, Oct. 31, 1975)[2] indicated the use of surge brakes on trailers operated in interstate commerce was inconsistent with the requirements of §§ 393.48 and 393.49. The 1975 guidance reads as follows:

Section 393.48 Brakes to be Operative. The Bureau's position regarding surge brakes has been that they did not comply with the requirements of Section 393.48 of the Motor Carrier Safety Regulations. The cited section requires, in part, that all brakes with which motor vehicles are required to be equipped must be operative at all times. A surge brake which is only operative under certain preset conditions would not be in compliance with this requirement. In other words, surge brakes, in general, are only operative when the vehicles are moving in the forward direction.

Section 393.49 Single Valve to Operate All Brakes. A surge brake would comply with the requirements of Section 393.49 as it specifically states that the brake system shall be so arranged that one application valve shall, when applied, operate all of the service brakes on the motor vehicle or combination of motor vehicles. When the service brakes on a power unit towing a vehicle with surge brakes are applied, the brakes on both vehicles would be applied. The power unit brakes would be applied by its application valve and the surge brakes on the towed vehicle by the overrunning effect.

Subsequent regulatory guidance published by FHWA on November 17, 1993, (58 FR 60734, 60755) indicated that surge brakes did not comply with either § 393.48 or § 393.49. It reads as follows:

Section 393.48 Brakes to be Operative.

Question 1: Do surge brakes comply with § 393.48?

Guidance: No. Section 393.48 requires that brakes be operable at all times. Generally, surge brakes are only operative when the vehicle is moving in the forward direction and as such do not comply with § 393.48.

Section 393.49 Single Valve to Operate All Brakes. Question 1: Does a combination of vehicles using a surge brake to activate the towed vehicle's brakes comply with § 393.49?

Guidance: No. The surge brake cannot keep the trailer brakes in an applied position. Therefore, the brakes on the combination of vehicles are not under the control of a single valve as required by § 393.49. * * *

The 1993 guidance was also republished in FHWA's April 4, 1997, publication, ''Regulatory Guidance for the Federal Motor Carrier Safety Regulations.'' (62 FR 16370, 16415–16416)

Various parties over the years expressed concern about FMCSA's position on trailer surge brakes. FMCSA advised interested parties to follow the procedures found at § 389.31 and submit a petition requesting such a rule change accompanied by sufficient information supporting the safety performance of their request. The Surge Brake Coalition (Coalition) submitted such a petition requesting a rulemaking to change the regulation. FMCSA notes that in contrast to the United States, Canada allows surge brake systems on trailers used in inter-Provincial commerce. Today's rule allowing surge brakes will enhance the uniformity of Canadian and U.S. safety regulations.

B. The Surge Brake Coalition Petition

The Coalition submitted a petition on February 28, 2002, asking FMCSA to undertake rulemaking to allow surge brakes by amending §§ 393.48 and 393.49. Members of the Coalition include trailer manufacturers, parts suppliers, commercial users of surge-braked trailers, trailer rental companies, and trade associations representing segments of the trailer business. A copy of the Coalition's petition is included in the docket referenced at the beginning of this document.

The Coalition said:

Technological advances in braking systems render the original purpose of 393.49 and its ''single-valve'' criterion overly broad and excessively restrictive. FHWA [previously] developed this regulation as a materials-oriented specification to foreclose the shortcomings of and risks associated with the predominant braking system of the day, wheel brakes and their use in conjunction with large tractors or power units.

The Coalition asserted that Congress had declared that DOT's motor vehicle safety standards must be minimum performance standards, based upon performance of the vehicle (49 U.S.C. 30102(a)(8) and (9)). The standards must ''meet the need for motor vehicle safety'' and must be ''stated in objective terms'' (49 U.S.C. 30111(a)). However, FMCSA's interpretation of how §§ 393.48(a) and 393.49 apply to surge brakes is a prescriptive component specification that does not address how the trailer braking system performs either as a unit or as part of a combination vehicle.

The Coalition requested that section 393.48 be amended by:

1. Revising paragraph (a) to read:

''General rule. Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.''

2. Adding a new paragraph (d) to read:

''(d) Surge brakes. Paragraph (a) of this section does not apply to:

Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, equipped with inertial surge brakes when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; or

Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, equipped with inertial surge brakes when the GVWR does not exceed 1.25 times the GVWR of the towing vehicle.''

The Coalition also requested the following exception be added to § 393.49:

''This requirement shall not apply to trailers equipped with surge brakes that satisfy the conditions provided in § 393.48(d).''

The Coalition argued that surge brakes provide a safe, practical braking system for CMV combinations, especially for scenarios in which the trailer is likely to be towed by a variety of vehicles. For example, in the rental market, trailers are commonly rented separately from towing vehicles, and towing vehicles frequently are not wired for electric brake controls. The Coalition indicated that rental companies believe it is ''prohibitively expensive and impractical'' to install or adapt an electric brake control system on each towing vehicle every time they rent a trailer or piece of mobile equipment outfitted with electric brakes.

The Coalition stated that surge brakes are a popular alternative to electric brakes because they activate automatically when the towing vehicle brakes are applied, adapt to the weight of the trailer load, have fewer components, and require less maintenance than trailers with electric brakes. These features make surge brakes ideal for flatbed and van-type trailers with a GVWR of 20,000 pounds or less, and boat trailers serving the marine industry. The Coalition also noted that manufacturers install approximately 250,000 surge brake systems annually on such trailers. This includes both in the personal market and the commercial intrastate market in 7 States, as of their 2002 petition, where the Coalition said surge brakes are allowed in intrastate commercial applications. (The 2004 article cited in the Regulatory Evaluation from Trailer Body Builders indicates the number of such States had risen to 9.[3]) The Coalition estimated that over 25 percent of the rental trailer fleet is equipped with surge brakes. There are no restrictions in any State on surge-braked trailers for personal use.

The Coalition's Engineering Tests

In order to demonstrate systematically that surge brake equipped trailers meet the safety performance requirements of the FMCSRs, as well as relevant testing

[2] The Federal Highway Administration's (FHWA) Bureau of Motor Carrier Safety (Bureau) (FMCSA's predecessor agency) published these interpretations.

[3] A Break on Brakes, in Trailer Body Builders, August 1, 2004, Rick Weber (*http://trailer-bodybuilders.com/mag/trucks_break_brakes/*).

procedures adapted from NHTSA's FMVSS No. 121 that apply to air-braked trailers, the Coalition retained the services of Mr. Richard H. Klein, P.E., who is described as a nationally known expert in trailer safety and testing. Mr. Klein was tasked to develop a test plan, select an independent testing laboratory, and to oversee the testing of a variety of tow vehicles and trailers equipped with surge brakes. Mr. Klein finalized the test protocol, procedures and methods. The tests covered combinations of representative towing vehicles commonly used by customers and trailers widely available in the rental market. Special attention was given to the ratio of the gross vehicle weight rating (GVWR) of the towing vehicles to that of the trailers when evaluating braking performance. Mr. Klein then solicited bids to obtain the services of a qualified, reputable, independent testing lab to execute the tests.

The facility selected by Mr. Klein was Exponent Failure Analysis Associates' (EFAA) Test and Engineering Center in Phoenix, Arizona. EFAA is an ISO 9001 lab that conducts a wide variety of scientific testing and research. EFAA has performed compliance testing on various FMVSSs for NHTSA. Initially, EFAA tested and fully analyzed the data from the braking performance of 11 different combinations of instrumented towing vehicles and trailers from the matrix developed by Mr. Klein. Those 11 combinations were chosen for full analysis from the 20 instrumented combinations initially tested because they represented a very wide range of towing vehicle to trailer GVWR ratios. Based on results of those initial tests, two additional vehicle configurations were tested to determine the performance of trailers over 12,001 pounds GVWR when the ratio of the simulated trailer GVWR to towing vehicle GVWR was restricted to 1:1.25.

Mr. Klein interpreted the test data provided to him by EFAA and prepared the final report. His report is included as part of the petition submitted by the Coalition, and is, thus, included in the docket for this rulemaking.

Test Vehicles

Trailers (GVWR)

- *Light.* 1999 U-Haul tandem axle auto transport (6,000 pounds GVWR), equipped with U-Haul surge brake actuator.
- *Medium.* 2000 Big Tex tandem axle, open cargo area, with side rails (14,000 pounds GVWR), equipped with Demco Model DA20 surge brake actuator.
- *Heavy.* Two-2001 Wells Cargo flatbed trailers with triple torsion axles (20,000 pounds GVWR). One trailer was equipped with a Titan model 20 surge brake actuator and the other with a Demco DA20 surge brake actuator.

Towing Vehicles (GVWR)

- *Light.* 1993 Chevrolet C–1500 (6,100 pounds GVWR), curb weight 4,194 pounds. The vehicle was equipped with front disc brakes and rear drum brakes. The vehicle was also equipped with a rear-axle antilock braking system (ABS).
- *Medium.* 2001 Chevrolet K–3500 (11,400 pounds GVWR), curb weight 7,072 pounds. The vehicle was equipped with four-wheel disc brakes, four-wheel ABS and dual rear tires.
- *Medium.* 2001 GMC Sierra (11,400 pounds GVWR), curb weight 7,476 pounds. The vehicle was equipped with four-wheel disc brakes, four-wheel ABS and dual rear tires.

Note: The petition referred to the Chevrolet K–3500 and GMC Sierra as ''heavy'' vehicles. This document labels them as medium weight vehicles to distinguish them from the later discussion of a towing vehicle with a 16,000-pound GVWR, which we term ''heavy.''

Test Protocol

The Coalition developed a test plan modeled on the procedures employed by NHTSA. It was designed to check brake performance in three areas of particular concern for surge brake equipped trailers.

1. *Straight-line braking:* Vehicle combinations were tested to see whether their stopping distance from 20 mph could meet the straight line performance requirements under § 393.52. The vehicle combination was required to stay within a 12-foot-wide lane during the test and not exceed the 40-foot stopping distance limit.

2. *Braking in a curve:* FMVSS Nos. 105 and 121 both require testing of brakes in a 500-foot radius curve from 30 mph on wet pavement to determine functionality of the ABS brakes on what would be the towing vehicles in this rulemaking. This requirement does not apply since functioning of ABS brakes is not the subject of this rulemaking. Although the FMVSS do not have a specification for braking-in-a-curve tests for trailers, the Coalition decided to include such tests of combination vehicles on a dry surface (as required by § 393.52) to check for jack-knifing tendencies and any other sources of instability. Testing consisted of driving the towing and trailer combinations at 30 mph on a circular, 12-foot-wide, 500-foot-radius test track. The driver then applied the brakes to achieve maximum deceleration, and the vehicle combination was required to stay within a 12-foot-wide lane during the stop.

3. *Brake-holding on a hill:* Because surge brakes work by transforming the trailer's forward momentum into hydraulic braking pressure, a stationary trailer facing uphill generates no braking effect. The Coalition, therefore, tested whether a combination that is required to stop facing uphill on a 20 percent grade can safely remain stationary using only the service brakes of the towing vehicle. The issue has practical implications in hilly areas where stop signs or traffic signals might halt a combination heading uphill. The Coalition applied the standard normally used for the parking brake, which in this case is for the towing vehicle, as specified in FMVSS Nos. 105 and 121, i.e., holding on a 20 percent grade. The combination was required to remain stationary for at least 5 minutes.

Test Results

A total of 22 towing vehicle and trailer combinations were tested. The petition explained that data from 13 instrumented combinations representing the widest possible range of weight ratios were selected for detailed analysis and inclusion in Mr. Klein's final report, which was included in the petition. The petition says that data collected from the other instrumented vehicle combinations tested were not included in the report because of budget constraints, but these tests generated essentially the same performance results as those that were included.

Initially, three towing vehicles representing two weight classes were tested with three trailers representing three weight classes. Subsequently, a fourth medium weight towing vehicle and heavy trailer were added for two extra tests.

The first three towing vehicles were run both at their unloaded curb weights of 4,194 pounds, 7,072 pounds and 7,476 pounds, and also loaded to their approximate GVWR of 6,100 pounds, 11,400 pounds, and 11,400 pounds, respectively. The three trailers were loaded at different weights to simulate towing vehicle to trailer GVWR ratios of 1:1, 1:1.25, 1:1.5, 1:1.7 and 1:2. The test ''curb weights'' shown in the petition for the towing vehicles were measured by driving the towing vehicles with loaded trailers attached onto the scales just before starting the test. Thus, the ''curb weights'' shown in the test data includes the driver, test equipment, fuel load, and tongue weight. A reasonable approximation of the tongue weight is 10 percent of the loaded trailer weight. For example, in a medium towing vehicle with an unloaded curb weight of

7,072 pounds towing a heavy trailer loaded to 16,540 pounds, the weight of the driver, fuel and test equipment and tongue weight produced a test ''curb weights'' of 9,370 when the towing vehicle began the test. For similar reasons, a few of the actual test weights for the towing vehicle slightly exceeded the GVWR of the towing vehicle.

1. *Straight-line braking:* A light towing vehicle (GVWR of 6,100 pounds), operating both at test curb weight and loaded to full GVWR, was tested in combination with a light trailer loaded approximately to its GVWR at 6,030 pounds for a ratio of approximately 1:1. Both of these combinations stopped from 20 mph well within the 40 feet allowed by § 393.52.

The light towing vehicle loaded approximately to its GVWR of 6,100 pounds was also tested with a medium weight trailer (14,000 pounds GVWR) loaded to 9,090 pounds and 12,090 pounds (simulating GVWR ratios of approximately 1:1.5 and 1:2, respectively). These combinations also complied with § 393.52 by stopping from 20 mph within 40 feet.

The medium towing vehicles of 11,400 pounds GVWR were tested loaded to their GVWR with (1) a medium trailer (GVWR 14,000 pounds) partially loaded to 12,090 pounds for a simulated ratio of approximately 1:1.1, and (2) a heavy trailer (GVWR 20,000 pounds) partially loaded to 14,600 pounds for a simulated GVWR ratio of approximately 1:1.25. These combinations complied with § 393.52, demonstrating safe braking performance when the simulated GVWR of trailers heavier than 12,000 pounds was limited to approximately the requested 1.25 times that of the towing vehicle, or less.

A medium towing vehicle tested with a heavy trailer (both loaded to approximately their GVWR for a ratio of 1:1.75) achieved a stopping distance of 44.7 feet from 20 mph. This combination has a GVWR ratio that is considerably higher (approximately 40 percent higher) than the 1:1.25 requested by the petitioner for heavier trailers, yet the vehicle combination still came very close to the stopping distance requirement of 40 feet, as specified in § 393.52.

This test with a GVWR ratio of 1:1.75 demonstrated that the Coalition's proposed GVWR ratio of 1:1.25 is conservative, and includes a substantial safety margin for trailers with a GVWR greater than 12,000 pounds.

2. *Braking in a curve:* EFAA conducted 39 brake-in-a-curve tests with 11 combinations. The actual or simulated GVWR ratios varied widely (from 1:1 to 1:2), depending on the load carried by the trailer. These tests included all the vehicle combinations described in the straight-line braking test above, except for the two combinations added later, i.e., a medium towing vehicle with a trailer loaded to 14,600 pounds for a weight ratio of 1:1.25. The braking-in-a-curve test was not done on those combinations because these tests had already been run for that vehicle at weight ratios up to 1:2.

The combinations included in these tests included: light towing vehicle and light trailer; the light towing vehicle and the medium trailer; medium towing vehicle and medium trailer; and medium towing vehicle and heavy trailer. The reported results indicated that in all of the 39 tests, the combinations were able to stop from 30 mph within a 12 foot lane on a 500 foot radius circle without any loss of control.

3. *Brake-holding on a hill:* Six combinations were parked heading uphill on a 20 percent grade. In all cases, the service brakes on the towing vehicle held the entire combination in place for 5 minutes, the duration of the test. The combinations tested included: A light towing vehicle both at its test ''curb weight'' and loaded to its GVWR attached to a trailer loaded to a simulated GVWR of 12,090 pounds, for a maximum GVWR ratio of approximately 1:2; a medium towing vehicle tested at its test ''curb weight'' with a heavy trailer loaded to 16,540 pounds for a simulated GVWR ratio of approximately 1:1.45; and a medium towing vehicle loaded approximately to its GVWR and tested with a heavy trailer loaded to its approximate GVWR of 20,000 pounds, representing a GVWR ratio of about 1:1.75.

Although surge brakes automatically release when deceleration stops, the tests showed that the service brakes of a towing vehicle are more than adequate to hold the combination at a stop even while facing uphill on a 20 percent grade, even when the GVWR ratios substantially exceed the limits proposed by the Coalition.

C. Analysis of Petition

The data submitted by the Coalition indicate that approximately 250,000 surge-brake units are installed each year. This large number creates a considerable population of non-commercial surge-braked trailers operating on the public roads. Numerous commenters contend that this trailer braking technology is inherently unsafe, as discussed in following sections, because—compared to other brake systems—it increases (1) the risk of brake fires while descending large hills, and (2) the risk of crashes. FMCSA was unable to find any data to support those claims. Although surge brakes have been in use for many years, no government agency or private entity that FMCSA is aware of has found their performance to be inadequate or contributory to highway crashes. The absence of such data suggests that the alleged safety problems of surge brakes are in fact a non-issue for their manufacturers, renters and insurers of trailers so equipped, and State and local safety officials. FMCSA believes that the use of surge brakes has proven to be safe.

FMCSA investigated whether crash data could be obtained from either NHTSA's Fatality Analysis Reporting System (FARS) or the General Estimates System (GES) to assist in this evaluation. Neither FARS nor GES identifies the type of brakes used on trailers involved in fatal or non-fatal crashes and, therefore, cannot reveal whether surge brakes are under-or over-represented in crash statistics.

FMCSA analyzed the information provided by the Coalition and, as indicated in the NPRM, made a preliminary determination that the test results supported a number of conclusions. Vehicles equipped with surge brakes, subject to the GVWR ratios proposed in the petition and NPRM (1) have sufficient braking capability to comply with the Agency's stopping requirements while operating on public roads in interstate commerce; (2) have no braking stability problems; and (3) are able to safely hold their position when stopped facing uphill on steep grades, and then to proceed.

The test results involving a medium towing vehicle and a heavier trailer were particularly important. The tests demonstrated that heavier towing vehicles in compliance with FMVSS No. 105, which allows a longer stopping distance for non-passenger vehicles over 10,000 pounds, would still meet the vehicle braking performance requirements of § 393.52 if the GVWR ratio of towing vehicle to trailer did not exceed 1:1.25. The Coalition's petition asked for the break point in towing vehicle to trailer GVWR ratio to occur at 12,000 pounds. At a GVWR ratio of 1:1.25, the FMVSS No. 105 definition for towing vehicles of 10,000 or more pounds would place that break point for trailers with a GVWR of over 12,500 pounds. FMCSA chose the more conservative 12,000 requested by the Coalition.

Thus, while surge brakes are not ''operable at all times,'' as required by § 393.48(a), FMCSA concluded that the Coalition's safety performance test

results, which show that towing vehicles pulling surge-braked trailers were consistently able to stop within the distances required by § 393.52, provided certain GVWR ratios were observed, adequately demonstrate that the design requirement of § 393.48(a) is excessively restrictive. The purpose of § 393.48(a) is to maintain highway safety, and the Coalition's wide-ranging test program showed that towing vehicles, which are all subject to either FMVSS Nos. 105, 121 or 135, when operated with surge-braked trailers that are within the specified GVWR ratios, meet all applicable stopping tests. In view of those performance results, the Agency preliminarily determined that § 393.48 should not be allowed to bar the operation of surge-braked trailers in interstate commerce.

FMCSA's analysis of the petition was reviewed by NHTSA, which concurred in the determination to grant the petition to initiate a rulemaking.

D. Notice of Proposed Rulemaking (NPRM)

FMCSA published an NPRM on October 7, 2005 (70 FR 58657). The Agency explained that the use of surge brakes, under the conditions specified in the NPRM, appeared to be consistent with the safety performance objectives, though not the letter, of §§ 393.48 and 393.49. Therefore, the Agency concluded it was appropriate to propose amending the regulations to allow the use of surge-braked trailers in interstate commerce.

The NPRM proposed adding the following definition of ''surge brake'' to § 390.5:

Surge Brake. A self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer, to slow down or stop the towed vehicle.

The NPRM proposed amending § 393.48 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 393.48 Brakes To Be Operative

(a) *General rule.* Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

(b) * * *

(c) * * *

(d) *Surge brakes.* Paragraph (a) of this section does not apply to:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, equipped with inertial surge brakes when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; or

(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, equipped with inertial surge brakes when the GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

The NPRM proposed replacing § 393.49 in its entirety, including a revised title, to read as follows:

§ 393.49 Control Valves for Brakes

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, every motor vehicle, manufactured after June 30, 1953, which is equipped with power brakes, must have the braking system so arranged that one application valve must when applied operate all the service brakes on the motor vehicle or combination of motor vehicles. This requirement must not be construed to prohibit motor vehicles from being equipped with an additional valve to be used to operate the brakes on a trailer or trailers or as provided in § 393.44.

(b) *Driveaway-Towaway Exception.* This section is not applicable to driveaway-towaway operations unless the brakes on such operations are designed to be operated by a single valve.

(c) *Surge brake exception.* This requirement is not applicable to trailers equipped with surge brakes that satisfy the conditions specified in 49 CFR § 393.48(d).

In view of the representative nature of the simulated GVWR ratios for towing vehicles and trailers used in the Coalition's tests and the satisfactory performance results, the NPRM noted that it was appropriate to conclude that surge-braked vehicles were safe, when operating within the specified ratios of towing vehicle GVWR to trailer GVWR.

The petition did not include test data demonstrating that a towing vehicle with a GVWR of 16,000 pounds or more, towing a 20,000 pounds trailer, could stop within 40 feet. Therefore, FMCSA noted it was reasonable to assume such a combination would pass the test, but also asked for public comment and data either supporting or contradicting that assumption. Specifically:

The Agency requests comment on whether additional analysis is needed to support the Petitioner's assertion that vehicle combinations that include a heavy trailer (GVWR between 14,600 pounds and 20,000 pounds) would satisfy FMCSA's brake performance requirements under § 393.52 when the GVWR of the trailer is 1.25 times that of the towing vehicle or less. The agency is also requesting the submission of brake performance data and information relevant to all the other issues raised in the petition, and the proposed amendments to §§ 393.48 and 393.49.

II. Discussion of Comments to the NPRM

The Agency received 63 individual comments in response to the NPRM. (In some cases, more than one person from the same organization submitted similar comments.) Comments were submitted on behalf of the following organizations: A–1 Rental; A to Z Rental Center; ABC Equipment Rental; Action Rental; ADH Equipment & Sales; Advocates for Highway and Auto Safety (Advocates); Aide Rentals & Sales II; All County Rental Center; All Star Rents; ALTCO Tool Rental, L.L.C.; American Rental Association (ARA); American Trucking Associations, Inc. (ATA); Aurora Rents, Inc.; Arapahoe Rental; Bee Gee Rental & Sales; Mr. Barry Hansel; Bill's Rental Center, Inc.; Bradley Rentals; Bryant's Rent-All, Inc.; Buttons Rent-It; Carlisle Industrial Brake and Friction (Carlisle); Construction Rental Inc.; County Corner Rental Center, Inc.; Do-It-Yourself, Inc.; Equipment Rentals Inc.; Front Range Rents; Grants Rental; Highway 55 Rental; House of Rental; Jackson Rentals & Supplies Inc.; Johnson Creek Rentals; Kimps ACE Hardware and Rental; LEW Corporation; Lew Rents; Lindner Hardware, Inc.; London Road Rental Center; Maryland State Highway Administration, Motor Carrier Division (MDSHA/MCD); Mikerentals, Inc.; National Marine Manufacturers Association (NMMA); the Ohio State Highway Patrol (OSHP); Reading Rentals, Inc.; Rental World; The Rentit Shop Inc.; S and M Rentals Inc.; Southwest Rentals, Inc.; Sunstate Equipment Co.; Surge Brake Coalition (Coalition); Taylor Rental; Taylor Rental Center; Truck Manufacturers Association (TMA); Tidewater Rental & Sales; Total Rental Center; Top Quality Rental and Sales, LLC; United Rentals; Wautoma Rental Center; Wirtz Rentals, Co.; and Wirtz Rentals Co. Summit Division.

A. Comments Supporting the NPRM

Fifty-four (54) commenters identified themselves as members of the ARA, and provided comments supporting the NPRM. The ARA commenters stated they rent surge brake equipped trailers, and indicated that FMCSA's current interpretation of the rules causes problems for both commercial and non-commercial customers. Specifically, non-commercial customers may use trailers equipped with surge brakes for private use without restrictions, while commercial customers are prohibited from using those same trailers in interstate commerce (or even in intrastate commerce in 41 States and the District of Columbia) due to the existing interpretations of the FMCSRs. These 54 commenters are grouped together under ARA.

1. ARA is a member of the Coalition, and supports its comments to the docket. ARA's initial comments essentially repeat material included in

the petition for rulemaking. Namely, the proposed modifications to 49 CFR Part 393 will allow commercial trailers to use surge brakes for specified weight combinations, thus harmonizing braking system regulations for commercial interstate, commercial intrastate and non-commercial trailers equipped with surge brakes. ARA believes the proposed action will simplify enforcement and eliminate the confusion that trailer rental and sales businesses experience when advising both commercial and non-commercial customers about appropriate equipment applications.

Under the current regulations, a person operating as a licensed contractor may not transport equipment on rented trailers equipped with surge brakes in interstate commerce. The requirement of the Motor Carrier Safety Assistance Program (MCSAP) that States adopt regulations compatible with Federal regulations (49 CFR 350.201(a), 350.341) has resulted in the widespread prohibition of surge-braked trailers for commercial purposes, even in intrastate commerce. However, the Coalition points out that an individual can legally use surge-braked trailers for non-commercial uses. ARA believes this creates a fundamentally unworkable system for rental businesses.

ARA contends that there are no viable alternatives to surge brakes for rental businesses, where customers usually own the towing vehicles. Trailers with electric brake systems are available, but are not standardized, and towing vehicles are not always equipped with electric brake controllers and the necessary wiring to operate trailers equipped with electric brakes. ARA states that trailer brakes are a fundamental safety requirement, and that use of self-contained surge brakes is the only viable way rental businesses can meet that requirement.

ARA asserted that safety is a serious concern for its members and that the safety record of surge-braked rental trailers is good. ARA said that ARA Insurance Services (AIS), its wholly owned insurance subsidiary, offers property, casualty and liability insurance to ARA members. It offered the following information:

> AIS writes insurance policies for approximately 40 percent of the ARA membership. AIS researched all trailer claims in its system back to 1989. During those 16 years, only six percent of the claims were for accidents involving trailers or towable equipment. In 91 percent of those claims, AIS was able to determine that on trailers equipped with surge brakes, the brakes were not the cause of the accidents. On the remaining nine percent [or 0.54% of all claims], there was not enough information or evidence available for AIS to find that surge brakes were a factor, nor to rule out the possibility that surge brakes were involved. However, within that 9 percent, we [AIS] found only two claims that actually mentioned surge brakes and neither of those specified that the insured [rental company] was liable for faulty surge brakes. It is noteworthy that through 25-plus years in business, AIS has and continues today to write insurance coverage for ARA members that have surge brake-equipped trailers in their fleets. There are no special provisions, premiums, or riders required for insuring surge brake equipped trailers in rental fleets.

FMCSA Response: As noted earlier, this rule focuses primarily on the mandate of 49 U.S.C. 31136(a)(1) that CMVs be ''equipped * * * and operated'' safely. The fact that ARA's insurance subsidiary (AIS) does not charge a premium to cover surge-braked rental trailers is a strong indicator, based on actuarial experience, that trailers with surge brakes are no less safe than trailers with any other kind of braking system. The only two claims AIS was able to locate that mentioned surge brakes do not indicate that they malfunctioned.

Many of ARA's comments addressed the issue of efficiency in trailer-rental operations that, while not directly related to safety, were considered in the preparation of this rule, including the regulatory analysis of its costs and benefits.

2. (a) The Coalition pointed out that surge brake technology has evolved since the petition was submitted and suggested the definition of surge brakes may someday require modification. For example, non-hydraulic surge brake systems have been developed and are entering the marketplace in Europe. The Coalition proposed that FMCSA consider deleting ''permanently closed hydraulic'' and the adjective ''hydraulic'' from the definition of surge brakes as proposed in § 390.5 to eliminate any future design restrictions, or the need for further rulemaking petitions. The bulk of the Coalition comments responded to the request in the NPRM to provide additional information on trailers with weights between 14,000 pounds and 20,000 pounds.

(b) The Coalition acknowledged its tests did not include a towing vehicle with a GVWR exceeding 11,400 pounds. Under the proposal, a towing vehicle with a minimum GVWR of 16,000 pounds would be required to tow a trailer with a GVWR of 20,000 pounds. Instead of obtaining a 16,000 pound towing vehicle and running actual tests, the Coalition hired a national trailer expert, Dr. Michael Graboski, to perform independent mathematical analyses to predict braking performance from the data generated by the Coalition's tests. Specifically, Dr. Graboski used the test data submitted in the petition and analytically predicted that the combination of a heavy towing vehicle (GVWR of 16,000 pounds or greater) and a trailer of 20,000 pounds GVWR would comply with the stopping distance requirements of § 393.52.

The Coalition again asserted that the stopping distance for a properly matched combination vehicle depends on the ratio of the towing-vehicle to trailer weight, and not just on the weight of the trailer. The Coalition argued that the EFAA straight-line braking data is sufficient to predict that combinations with heavy trailers (14,600 to 20,000 pounds GVWR) would comply with the requirements of § 393.52 at GVWR ratios of 1:1.25 and less. It then reiterated the following test data results:

- Test data showed that the medium towing vehicle loaded to its approximate test GVWR of 11,730 pounds successfully completed the braking in a 2curve testing at 30 mph with a test weight trailer of 20,560 pounds. This represents a simulated GVWR ratio of 1:1.75, compared to the proposed GVWR ratio of 1:1.25.
- The towing vehicle loaded to its approximate test GVWR of 11,730 pounds with a test weight trailer of 20,560 pounds also successfully held the combination facing uphill on a 20 percent grade for 5 minutes using the service brakes. This is a GVWR ratio of 1:1.75, compared to the proposed GVWR ratio of 1:1.25.
- The towing vehicle loaded to its approximate test GVWR of 11,730 pounds, pulling a test weight trailer of 20,560 pounds, was also able to stop in a straight line from 20 mph in a distance of 44.7 feet, which only slightly exceeds the 40 feet stopping distance requirement of § 393.52. But this combination represents a GVWR ratio of 1:1.75 as compared to the proposed GVWR ratio of 1:1.25 for trailers between 12,001 pounds and 20,001 pounds GVWR.
- The towing vehicle (both at test curb weight of 9,260 pounds and loaded to its GVWR of 11,400 pounds) pulling a 20,000 pound GVWR trailer loaded to 14,600 pounds (ratio of 1:1.28) stopped within 38.5 and 38.9 feet respectively. The test data was used to perform the two following analytical analyses.

Analysis one: Dr. Graboski analyzed the different combinations of towing vehicle and trailer load ratios using linear regression. That analysis predicted a stopping distance of exactly

40 feet for a towing vehicle with a GVWR of 16,000 pounds pulling a trailer with a GVWR of 20,000 pounds, which meets the standard for stopping distance allowed by § 393.52.

Analysis two: Dr. Graboski then performed a separate engineering analysis based upon the mathematical modeling relationship found in the final report submitted by Klein and Szostak under the 1979 NHTSA contract (DOT–HS–805–327).[4] The details regarding surge brake gain (defined and discussed below) were subsequently published as a Society for Automotive Engineers (SAE) paper.[5] This model quantifies the braking performance of towing vehicles with trailers equipped with surge brakes. Using the principles of engineering mechanics set forth in the Klein and Szostak model, Dr. Graboski applied the brake test data collected by EFAA to calculate the minimum surge brake gain necessary to achieve the required braking performance for a 16,000 pound GVWR towing vehicle with a 20,000 pound GVWR trailer equipped with surge brakes.

The deceleration of a towing vehicle-trailer combination is the sum of the towing vehicle and trailer braking forces divided by the sum of the weights of the towing vehicle and trailer. Surge brake operation relies on the compression force at the trailer hitch caused by deceleration of the towing vehicle being delivered to the trailer's hydraulic actuator to activate the trailer's hydraulic brakes. The compression force at the hitch is the product of the deceleration of the towing vehicle and the weight of the trailer minus the brake force of the trailer surge brakes.

Upon applying the towing vehicle brakes, the surge brake actuator, located between the trailer and the towing vehicle, receives the initial compressive force that results from the inertia difference between the braked towing vehicle and the as-yet-unbraked trailer. The surge brake actuator drives a piston in the trailer's hydraulic brake system master cylinder producing hydraulic pressure in the trailer's braking system proportional to that initial compressive force. The ratio of the resulting initial braking force applied to the trailer brakes to the compressive force at the surge brake actuator is termed the surge brake gain. More simply stated, the gain is the ratio of the amount of trailer braking force developed per pound of horizontal hitch force. This is a measure of the performance of that surge brake system. The value achieved is determined by the design characteristics of that particular system, including characteristics of the actuator. Although initial compression force generated at the hitch is subsequently diminished because of the braking force being applied by the trailer brakes, the amount of trailer braking force remains dependent on the gain realized above the remaining force at the hitch.

Dr. Graboski used the Klein and Szostak model to calculate the minimum required surge brake gain, G, necessary for the combination vehicle to stop within the 40 feet stopping distance requirement of § 393.52. That value is 1.48.

Instrument readings from several tests were available from EFAA. Those readings were used to calculate the initial surge brake gains that occurred for the two actuators tested for the two 20,000 pound GVWR 2001 Wells Cargo flatbed trailers. One was equipped with a Titan Model 20 surge brake actuator and the other with a Demco DA20 surge brake actuator.

- Towing vehicle loaded to its approximate test GVWR of 11,300 pounds and the 20,000 pound GVWR trailer loaded to 16,540 pounds, for a simulated GVWR ratio of approximately 1:1.45.
- Towing vehicle of 11,400 GVWR at test curb weight of 9,370 pounds and the 20,000 GVWR trailer loaded to 16,540 pounds, for a simulated GVWR ratio of approximately 1:1.45.
- Towing vehicle at approximate test GVWR of 11,730 pounds and the trailer loaded to its test GVWR of 20,560 pounds, for a GVWR ratio of approximately 1:1.75.
- Towing vehicle at approximately test GVWR of 11,400 pounds and the 20,000 pounds GVWR trailer loaded to a test 14,600 pounds, for a simulated GVWR ratio of about 1:1.28.
- Towing vehicle of 11,400 GVWR at test curb weight of 9,260 pounds and the 20,000 pounds GVWR trailer loaded to 14,600 pounds, for a simulated GVWR ratio of approximately 1:1.28.

Using the Klein and Szostak model, the surge brake gain, G, achieved for each of these surge brake actuators was calculated. It was 1.59 for the Demco DA20 and 1.84 for the Titan Model 20 surge brake actuators. The surge brake gain achieved by each of these actuators is thus well above the calculated minimum surge brake gain, G, of 1.48 needed to stop a combination of a 16,000 pound towing vehicle with a 20,000 pound trailer within 40 feet from 20 mph.

Based upon these analyses, the Coalition submits that it is safe to operate 20,000-pound GVWR trailers with towing vehicles having GVWRs of 16,000 pounds or more with braking characteristics similar to the vehicles tested. In summary, the Coalition believes that their tests and analytical evaluation of the data provide sufficient information to conclude that the proposals in the NPRM should be adopted.

FMCSA Response: (a) No data are available to the Agency regarding the performance of other surge brake technologies to support the Coalition's request to remove the word ''hydraulic'' from the definition of surge brake. If the Coalition wishes to make such data available to FMCSA, a modification of this definition may be evaluated.

(b) The additional analysis is consistent with the provision of § 389.31(b)(4) that requires petitions to contain ''* * * any information and arguments available to the petitioner to support the action sought.'' It is also consistent with the following request in the NPRM:

> The Agency requests comment on whether additional analysis is needed to support the Petitioner's assertion that vehicle combinations that include a heavy trailer (GVWR between 14,600 lbs and 20,000 lbs) would satisfy FMCSA's brake performance requirements under § 393.52 when the GVWR of the trailer is 1.25 times that of the towing vehicle or less. The agency is also requesting the submission of brake performance data and information relevant to all the other issues raised in the petition, and the proposed amendments to §§ 393.48 and 393.49.

The Agency notes that the Klein and Szostak model was applied on the assumption that the sustained braking deceleration of the heavy towing vehicle with a 16,000-pound GVWR remains the same as the initial braking deceleration achieved by the medium 11,400-pound GVWR vehicles. The basis for this assumption is that the 16,000 pound GVWR vehicle is required by FMVSS No. 105 to comply with the same braking performance (stopping distance) as the 11,400 pound GVWR vehicle. Therefore, the total braking capability of the 16,000 pound vehicle must be proportionally greater than for the 11,400 pound vehicle, making it more capable of maintaining the initial

[4] Development of Car/Trailer Handling and Braking Standards; Volume II: Technical Report, November 1979, copy in docket.

[5] Klein, R.H., Szostak, H.T., ''Description and Performance of Trailer Brake Systems with Recommendations for an Effectiveness Test Procedure,'' SAE 820135, 1982. This model quantifies the braking performance of combination vehicles with trailers equipped with surge brakes. An abstract of this copyrighted paper has been included in the docket. Anyone who wishes to examine a hard copy of this document should contact Mr. Luke Loy at the phone number given at the beginning of this rule. The paper may be also purchased from SAE. [*http://www.sae.org/servlets/productDetail?PROD_TYP=PAPER&PROD_CD=820135*]

braking deceleration force when the forward momentum of the trailer comes to bear upon the trailer hitch.

The assertion by the Coalition that the surge brake gain of both the Demco and Titan exceeds the minimum necessary for the combination vehicle to stop within 40 feet is relevant only if these actuators are reasonably representative of the brake gain provided by other surge brake actuators available in the market.

FMCSA notes that the Demco and Titan actuators on the test trailers represent manufacturers with very prominent market shares for heavy trailer actuators. The technology on which these actuators are based is quite standardized. The market for surge brake actuators for heavy trailers (14,600–20,000 pounds) is relatively small. As such, it is reasonable to assume other competing surge brake actuators in this weight range will have to provide comparable performance to remain competitive in the market. Therefore, the Agency believes the measured surge brake gains of 1.59 and 1.84 are representative, and that it is reasonable to presume the minimum gain necessary of 1.48 will be met by available actuators.

The Agency determined that the Coalition has provided sufficient additional analytical information supporting its original proposal to allow surge brakes on trailers when the towing vehicle to trailer GVWR ratio does not exceed 1:1.25 for trailers with GVWRs between 14,600 pounds and 20,000 pounds. The two independent analytical methods used by the Coalition, in conjunction with available test data, both predict that combination vehicles towing surge-braked trailers with GVWRs between 14,600 and 20,000 pounds, but not more than 1.25 times the GVWR of the towing vehicle, can meet the 40 feet stopping distance of § 393.52.

FMCSA finds these additional analyses persuasive and agrees with their conclusions.

3. The National Marine Manufacturers Association (NMMA) supports the use of trailers equipped with surge brakes in interstate ''commercial'' applications, and argues the recreational marine industry has a unique problem regarding surge brakes. NMMA notes that surge brakes are especially useful and reliable in marine applications where the boat trailer is expected to be repeatedly immersed in water, a practice that could damage components of electric brakes. NMMA states that while the consumer use of surge brakes on boat trailers is exempt from existing Federal regulations, the same brake system that is considered a safety feature for consumer use is prohibited when that boat trailer is used in a technically ''commercial'' application (for example, when a boat dealer or repair shop transports a boat to or from a customer using the customer's trailer). In addition, the FMCSRs may be violated when a boat dealer or manufacturer transports a boat on a consumer type surge-braked trailer to or from a boat show.

NMMA believes the current regulation is especially burdensome for the recreational boat industry, since a consumer boat trailer is often specifically matched or manufactured for a particular boat and is the preferred way to transport that boat. NMMA notes that this use of a surge brake equipped boat trailer, although sometimes commercial in nature, is in fact identical to the use of the boat trailer by the consumer. In addition, even if a boat dealer or repair shop did use its own trailer for these trips, NMMA states that it would be preferable to use a trailer with surge brakes, since those trailer brakes are generally considered more durable and suitable for water applications.

FMCSA Response: The NMMA comments explain the marine uses of surge brakes in detail as well as the problems created by the Agency's position that surge brakes do not comply with the requirements of Part 393. While much of its discussion centers on the operational difficulties that NMMA's industry partners face given the current regulatory requirements, NMMA also addresses the operational safety of surge brakes through real-world experience.

NMMA specifically states that a large number of private boat owners are personally using surge brake equipped trailers. Some of those trailers are for larger boats that would require a GVWR in the heavier range of 12,001 to 20,000 pounds. The fact that no safety problems relating to surge brake performance have been reported by the marine industry or by State and local highway safety officials, as a result of that usage on the public roads, suggests that these trailers and their braking systems are safe.

B. Comments Opposing the NPRM

1. The Ohio State Highway Patrol (OSHP) believes surge brakes are a viable alternative to braking systems currently in use on smaller commercial motor vehicles, but also commented that:

(a)(i) Additional testing is appropriate, and

(ii) Such testing should be completed by FMCSA, NHTSA, and/or an independent group other than the Coalition. OSHP recommends that any additional testing include old vehicles, to the point where the requirements of § 393.52 cannot be met. OSHP believes that such testing would provide law enforcement with an acceptable level of confidence, and a margin of safety, for the use of surge brakes.

(iii) OSHP recommended that testing should also include the vehicle's ability to stop during backing maneuvers.

(b) OSHP also believes that the criterion set forth in the NPRM, i.e., that the ratios of the towing vehicle to trailer weight must be based solely on GVWR, is incomplete, and should include provisions for using each of the vehicles' actual gross weights to determine compliance with the proposed regulation. Specifically, OSHP recommended the inclusion of a provision to allow law enforcement to use either the vehicles' GVWR or their actual gross weights to determine compliance with the regulation. OSHP believes that this would keep the operator of the vehicle ''honest'' and keep unsafe combinations of vehicles from operating on the highway.

FMCSA Response: (a)(i) FMCSA has reviewed the Coalition's test procedures and finds them well grounded in modern scientific practice and sufficient to measure the safety performance of surge brake systems. The tests were performed in a controlled fashion by a reputable organization, EFAA, precisely to ensure that the test results would not be influenced by the Coalition. Further, EFAA is an ISO 9001 compliant facility that has conducted FMVSS testing for NHTSA. FMCSA does not believe additional testing is required.

(a)(ii) A review of the test results provided by the Coalition indicates the towing vehicles were not new, and that the more extreme weight ratio combinations tested failed to achieve the brake performance requirements of § 393.52(d). The Coalition petitioned FMCSA to adopt GVWR ratios substantially more stringent than the ratios at which test combinations failed to meet the required stopping distance.

Manufacturers were required by NHTSA rules and § 393.55(a) to include ABS systems on new vehicles built after March 1, 1999; the brake performance of older vehicles manufactured before that date is essentially grandfathered. FMCSA acknowledges that two of the three Coalition test vehicles were newer than March 1999 and, thus, were equipped with ABS on all wheels. The third vehicle was a 1993 model that only has ABS on the rear axle brakes.

However, such older vehicles are in use towing commercial trailers with electric brakes, and commercial trailers weighing less than 3,000 pounds that are not required to be equipped with any brakes.

No data were submitted to the docket indicating that towing vehicles without ABS are a safety hazard. The subject of this rulemaking is the safety of surge brakes on trailers, not whether the Agency or anyone else believes that the lack of ABS on a grandfathered CMV would adversely affect the performance of a trailer equipped with surge brakes. As a practical matter, surge-braked trailers might improve the stopping performance of some pre-1999 towing vehicles (especially unloaded pickups) by putting added weight on the rear tires and, thus, delaying the onset of lock-up.

The Coalition's test procedures were specifically selected to address several existing specifications for braking systems. These include FMVSS No. 105 for Hydraulic Brakes, FMVSS No. 121 for Air Brake Systems, and § 393.52(d) for the FMCSA vehicle stopping distance requirements. FMCSA has no reason to believe the test procedures used by EFAA failed to demonstrate the braking characteristics of combination vehicles using surge-braked trailers.

The testing performed by EFAA utilized a wide variety of towing-vehicle and trailer weight combinations, with numerous different simulated GVWR ratios. Multiple test runs for each combination were made and measured. The ratios of weights for towing vehicle to trailer simulated GVWRs covering all ratios proposed in the petition, and included testing of GVWR ratios exceeding the request. Test data showed that all combinations were stable while braking in a curve and held firm on a 20 percent uphill grade while using only the towing vehicle's service brakes, some at GVWR ratios much higher than those proposed by the Coalition, in some cases at a ratio of 1:2. The subsequent mathematical analysis performed by Dr. Michael Graboski also predicted that the requirements of § 393.52(d) would be met by towing vehicles with GVWRs of 16,000 pounds or greater, towing surge brake trailers with a GVWR of 20,000 pounds or less, for a GVWR ratio of 1:1.25 or less.

The FMVSS currently includes manufacturers' performance standards only for air-braked trailers; there are no such standards for trailers with electrical, electric over hydraulic, or surge brakes. OSHP provided no information that the operation of surge brake equipped trailers for personal use has created undue concern among safety and law enforcement personnel.

(iii) There are no FMCSA or NHTSA regulatory standards for brake performance when a vehicle backs up. Rather, brake performance requirements for motor vehicles are applicable only when a vehicle is operating in the forward direction. Because vehicles typically operate in reverse at speeds much lower than when operating in the forward direction, and only for very short distances, existing tests that specify brake performance in the forward direction are considered to be sufficient to ensure that the same vehicle can stop safely when operating in reverse. As such, none of the FMVSSs or the FMCSRs specify braking performance requirements for vehicles operating in reverse.

While surge brakes automatically release when deceleration stops—and therefore, are not operable while the vehicle is operating in reverse—the brake holding on a hill tests conducted by the Coalition clearly showed that the service brakes of a towing vehicle alone are more than adequate to hold the combination at a stop (1) even while facing uphill on a 20 percent grade, and (2) even when the GVWR ratios substantially exceeded the limits that had been proposed by the Coalition. FMCSA considers these brake holding on a hill tests to be a much more severe test of brake performance than stopping a vehicle/surge brake equipped trailer combination traveling in reverse at low speeds or backing down an incline at less than a 20 percent grade. While recognizing that vehicles are not required to demonstrate the ability to stop while operating in reverse, as noted in the preceding paragraph, FMCSA is confident that these test results, in conjunction with the conservative GVWR ratios specified in this rule, will ensure that combinations with surge brake equipped trailers will be able to stop safely while operating at low speeds in reverse.

(b) FMCSA agrees with OSHP that an overloaded surge-braked trailer, or one without a manufacturer's GVWR certification, could pose safety risks. Therefore, the Agency has added provisions to the reformatted § 393.48(d) to deal with missing GVWR labels and overloading. New paragraphs (2) and (3) are added to read as follows:

(2) The gross vehicle weight (GVW) of a trailer equipped with surge brakes may be used instead of its GVWR to calculate the weight ratios specified in this paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.

(3) The GVW of a trailer equipped with surge brakes must be used to calculate the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.

General or approximate GVWRs for most models of towing vehicles covered by this rule are commonly known. FMCSA will ask the Commercial Vehicle Safety Alliance (CVSA) to make these values available for use when towing vehicles between 10,000 and 16,000 pounds do not have a GVWR plate. If OSHP is concerned about overloaded towing vehicles, all existing enforcement procedures remain in effect for dealing with vehicles loaded beyond their manufacturer's GVWR. OSHP has the authority under the State version of § 396.7 (adopted pursuant to MCSAP) to remove such vehicles from the road, and this provision is incorporated in the North American Standard (NAS) Out-of-Service criteria.

2. Mr. Barry Hansel commented that ''surge brakes are better than no brakes,'' but he argued:

(a) That surge brakes have numerous shortcomings that do not apply to electric over hydraulic brake systems [6] available from numerous manufacturers. Specifically, Mr. Hansel stated that (i) surge brakes cannot provide braking when backing down a hill, because they do not have an electrical solenoid that can be activated, (ii) surge brakes can be unintentionally activated by backing up a grade of as little as a 1 percent, (iii) a jack-knifing trailer cannot be straightened out with a surge brake, and surge brakes can actually create or aggravate a jack-knife condition, and (iv) when going down steep mountain roads, surge brakes would activate the trailer brakes and cause them to overheat or burn out.

(b) Mr. Hansel contends that alternative brake technologies for trailers—specifically electric over hydraulic brake actuators—are safer because they do not have the shortcomings associated with surge brakes that were noted above.

(c) Mr. Hansel stated that the stopping distances documented by the Coalition were most likely achieved under ideal road conditions. He contends that surge brakes cannot stop a trailer on ice covered, wet, or dirt roads safely.

[6] Electric over hydraulic is distinguished from the more commonly known electric brake systems in that the former consists of an electric motor, pump, and brake fluid reservoir attached to the trailer and plumbed into the hydraulic brake system of the trailer. The brakes are applied by pushing on the brake pedal of the towing vehicle, which activates the electric brake controller mechanism in the towing vehicle. This sends an electrical signal to the electric motor and pump on the trailer, causing the trailer brakes to pressurize and slow or stop the trailer. With the same controller, the trailer brakes can be activated by themselves simply by activating the manual override on the controller.

(d) He further argues the only reason the Surge Brake Coalition favors surge brakes is because they are cheaper than electric over hydraulic brakes.

FMCSA Response: (a)(i) As discussed earlier, neither FMCSA nor NHTSA has any regulatory standard for braking while a vehicle backs up. Although not a significant safety concern, this issue is largely addressed by the tests documenting the ability of towing vehicles' service brakes to hold several combinations facing uphill on a 20 percent grade.

(ii) The amount of braking force applied to the trailer brakes is a proportional function of the ratio of the towing vehicle and the trailer weight, and braking inertial forces generated by deceleration of the towing vehicle. Mr. Hansel is correct that, when a combination is backed up an incline, the trailer weight/gravity component could induce a braking effect. The larger inertial force generator is virtually absent. Additionally, some trailers are equipped with surge brakes with mechanisms that allow the operator to lock out the braking effect while backing the trailer. In any case, the Agency does not believe the presence or absence of this device is a safety issue. If the brakes should engage during a backing operation, it most likely would be an annoyance to the operator of these combination vehicles, not a safety issue associated with operating on public roads.

(iii) It is possible for some combination vehicles with air brakes, electric brakes, or the electric over hydraulic system described by Mr. Hansel, to apply the trailer brakes independently, in an effort to address a jack-knife situation. This technique is not easy to use in an emergency. Further, neither the FMVSSs nor the FMCSRs require combination vehicles to have this capability. Surge-braked trailers cannot be faulted for lacking a system that no other trailer is required to have.

Surge brakes are designed so that the amount of braking force applied by the trailer brakes is proportional to the effective braking/deceleration of the towing vehicle. Thus, the amount of braking of the trailer adjusts to that of the towing vehicle. If the braking ability of the towing vehicle is limited by the road conditions, so too is the brake-gain of the trailer, thus, preventing lock-up of the trailer brakes. However, in the unlikely case that the trailer brakes locked up, the driver could release them simply by taking his or her foot off the brake pedal, exactly the same technique used with electric or electric over hydraulic trailer brakes.

The braking-in-a-turn tests were specifically included to determine the inherent stability of each combination evaluated, i.e., whether there was a tendency to jack-knife. As pointed out in the discussions above regarding the breaking-in-a-turn test results, all combinations tested by EFAA passed this stability test.

(iv) With regard to the possibility of surge brake systems overheating or catching fire going down a steep mountain grade, no such problems have come to the Department's attention as data in either of NHTSA's crash databases (FARS or GES), despite the large number of personal trailers equipped with surge brakes currently in use. This has not been identified as a safety issue in mountainous regions by enforcement personnel in such States. While it is incumbent on the commenter to substantiate claims made, Mr. Hansel did not do so. Thus, FMCSA must conclude that no available empirical data supports his concern.

(b) FMCSA's role is limited to determining whether a braking system meets the safety performance requirements of the FMCSRs. Manufacturers may select any system that complies with Federal standards, including the electric over hydraulic advocated by Mr. Hansel.

(c) Mr. Hansel is correct that the Coalition's testing was performed in dry conditions. This is required by § 393.52(c), which directs that stopping distance tests be performed on a hard surface that is substantially level, dry, smooth, and free of loose material. These are the test conditions that apply to all CMVs, including electric and hydraulic over electric braked trailers.

(d) If the emerging brake technology espoused by Mr. Hansel, electric over hydraulic, meets the FMCSR safety performance standards, this final rule does not preclude its development, marketing, and use.

3. TMA acknowledged that surge brakes are well adapted to the rental market where trailers are towed by a wide variety of vehicles.

(a) TMA expressed general concern, however, that no test results or other evaluations are available to assess how these trailers would perform when towed by air- or hydraulically-braked vehicles with GVWRs exceeding those that were tested by the Coalition. In the absence of performance standards for trailers equipped with surge brake systems, TMA said it was unable to predict with certainty whether overall combination-unit braking performance would be acceptable.

Like OSHP, TMA recommended that FMCSA and NHTSA conduct additional research, testing, and evaluation prior to amending the standard to allow the use of surge brakes in interstate commerce.

(b) With regard to stopping distances on public roads, TMA expressed concern over the potential failure of the towing unit's brake system. This would reduce deceleration rates, which in turn would reduce the braking forces generated by the surge-braked trailer, and the net effect would be even longer stopping distances. TMA cited the requirements of S5.1.2 and S5.1.3 of FMVSS No. 105, which set manufacturing standards to deal with partial brake failure and inoperative power assist units, respectively. TMA also drew attention to S5.7 of FMVSS No. 121, which sets emergency brake standards for trucks and buses. The organization acknowledged, however, that FMVSS No. 105 includes no specific test of vehicle performance after brake failure.

(c) TMA expressed concern that users could unwittingly park combination units with gross combination weights (GCWs) in excess of 40,000–50,000 pounds facing uphill on grades. In these situations, and in others less severe, TMA was concerned that the towing vehicle's parking brake system, which is neither designed nor required to handle that amount of weight, would not be able to hold the combination vehicle stationary.

TMA noted that FMCSA's recently revised parking brake requirements at § 393.41 (70 FR 48008) require the following:

> (a) Hydraulic-braked vehicles manufactured on or after September 2, 1983. Each truck and bus (other than a school bus) with a GVWR of 4,536 kg (10,000 pounds) or less which is subject to this part and school buses with a GVWR greater than 4,536 kg (10,000 pounds) shall be equipped with a parking brake system as required by FMVSS No. 571.105 (S5.2) in effect at the time of manufacture. The parking brake shall be capable of holding the vehicle or combination of vehicles stationary under any condition of loading in which it is found on a public road (free of ice and snow) (Emphasis added). Hydraulic braked vehicles which were not subject to the parking brake requirements of FMVSS No. 571.105 (S5.2) must be equipped with a parking brake system that meets the requirements of paragraph (c) of this section.

TMA further noted:

> * * * the new FMCSA requirement, § 393.42(c), which applies to vehicles not subject to FMVSS Nos.105 and 121 on the date of manufacture (which would be the case with all surge-brake trailers since NHTSA made it clear in their most recent revision to FMVSS 105 that it does not apply to hydraulic brake trailers), reads in part:
>
> * * * every combination of motor vehicles must be equipped with a parking brake

system adequate to hold the vehicle or combination on any grade on which it is operated, under any condition of loading in which it is found on a public road (free of snow and ice).

TMA's reference in its December 2, 2005 letter to NHTSA making it clear that FMVSS No. 105 does not apply to trailer parking brakes can be found at (70 FR 37711, June 30, 2005).

TMA stated that since the parking brake system of the towing unit is neither required to meet, nor likely to be capable of meeting, this standard by itself, it is not apparent how this requirement could be met, under particularly adverse conditions, without the trailer having some type of parking brake system as well. While air-brake equipped trailers have this capability, TMA noted that trailers equipped with surge brakes—particularly those at the upper end of the proposed allowable weight range—generally do not have parking brake systems.

(d) TMA also pointed out concerns similar to those raised by Mr. Hansel regarding (i) excessive thermal loading of the towing unit's brakes on a long downhill grade, and (ii) the ability of a towing vehicle pulling a surge-braked trailer to make an abrupt stop while backing up at any speed above 1–2 mph.

FMCSA Response: (a) TMA members manufacture trucks weighing 19,500 pounds or more, which include a relatively higher percentage of air braked vehicles. Although air-braked towing vehicles subject to FMVSS No. 121 were not tested by EFAA, data available in the rulemaking and the additional explanations in this final rule should allay TMA's concerns.

The heaviest surge-braked trailer allowed by this final rule has a GVWR of 20,000 pounds. In order to meet the weight ratio specification, the minimum towing vehicle GVWR allowed for that trailer is 16,000 pounds, for a combined GVWR of 36,000 pounds. A higher combined weight rating is possible only if the additional GVWR is in the towing vehicle. Thus, a towing vehicle of 30,000 pounds GVWR would be required in order to achieve a combined GCWR of 50,000 pounds. If it were hydraulically braked, it would be subject to FMVSS No. 105, like the 16,000-pound GVWR towing vehicle, with the same stopping distance requirement. If that towing vehicle were air braked, it would be subject to FMVSS No. 121. It requires the same stopping distance as FMVSS No. 105. Thus, there appears to be no basis for TMA's suggestion that vehicles with higher GVWRs might not match the braking performance of a vehicle with a 16,000-pound GVWR. The Coalition's analysis, based on the model by Klein and Szostak, indicates that the braking performance of a lower GVWR ratio, i.e., a larger towing vehicle in combination with the same 20,000 pound GVWR trailer, would be better. This is because the stopping performance of the combination, including the surge-braked trailer, is dependent on the GVWR ratio of the towing vehicle to the trailer. The lower the ratio of GVWR of a trailer compared to that of the towing vehicle, the better the stopping power of the combination. The GVWR ratio of a 30,000 pound towing vehicle to a 20,000 pound trailer would be less than 1, i.e., 1:0.66.

In summary, FMVSS Nos. 105 and 121 have the same requirement for stopping distance. There is no reason to believe that a heavier towing vehicle with or without air brakes, which thus has a GVWR ratio below that required by this rule, would not meet the 40-foot stopping distance required by § 393.52(d), the 30 mph braking-in-a-curve test, and the 20 percent grade-service brake holding test.

(b) We agree with TMA's conclusion that no specific test applies to trailer brake performance after brake failure on the towing vehicle.

(c) TMA correctly noted there is no standard in FMVSS No. 105 that applies to the parking brake capability of hydraulically braked trailers. Neither is there a parking brake standard for electrically braked trailers or for trailers weighing less than 3,000 pounds that are exempted from having any brakes. Only air-braked trailers are subject to a parking brake standard. NHTSA, not FMCSA, has the authority to set manufacturing standards. Any rule requiring retrofitting of parking brakes to trailers already in operation would be prohibitively expensive, and the results of the tests submitted with the petition make it clear there would not be commensurate safety benefits.

Section 393.41(c) of the FMCSRs says that the parking brake on combination vehicles must be sufficient to prevent the combination from rolling backward. Although the rule does not further specify the performance standard, such as the grade on which roll-back must be tested, this standard applies to all combinations, including unbraked, electric braked, and surge-braked trailers. TMA's comments give no indication that its members have any parking brake problem for comparable electric-braked trailers, which do not have parking brakes. If manufacturers have no parking brake problem with similar GVWR electric-braked trailers, FMCSA is unable to see why there should be a problem with comparable surge-braked trailers.

(d) As discussed under 2(a)(iv) in response to Mr. Hansel's comments above, no data have been submitted in this rulemaking which supports this theoretical concern.

4. Carlisle elaborated on the points raised by Mr. Hansel and TMA.

(a)(i) Carlisle was primarily concerned that testing by EFAA for the Coalition was conducted on dry road surfaces. Carlisle contends that because the coefficient of friction drops with moisture or ice on the road surface, the trailer inertia may act to ''push'' the towing vehicle, thus, creating conditions where trailer jack-knife is much more likely to occur.

(ii) Carlisle noted that electric and electric over hydraulic trailer brake actuators do not rely on towing vehicle inertia to apply the trailer brakes. In these situations, the trailer brakes are applied at a proportionate rate whenever the towing vehicle brakes are applied. The combined braking of the two units minimizes the likelihood of a jack-knife condition. In addition, unlike surge brakes, the trailer brakes work when the vehicle backs up.

(b)(i) Carlisle, like Mr. Hansel, pointed out that alternative braking systems are available from more than one manufacturer, including themselves.

(ii) They also pointed out that most newer towing vehicles are wired for easy installation of in-cab brake controllers.

(c) Carlisle also expressed concern regarding elimination of the requirement, for trailers equipped with surge brakes, of a single control valve capable of operating all of the service brakes.

(d) Carlisle believes that one of the inherent problems with a surge brake system is the inability to verify that the system is working without driving the combination. Like MDSHA/MCD below, Carlisle questioned how a rental customer or enforcement agent could test a trailer to verify that the surge brakes are working.

FMCSA Response: (a)(i) As mentioned above, the FMCSRs require that brake testing be performed on a hard surface that is substantially level, dry, smooth, and free of loose material. Based on that, the brake-in-a-curve test, not required for trailers even by FMVSS No. 121, was also performed on a comparable surface. FMCSA cannot require surge-braked trailers to meet a different standard than other vehicles.

(ii) It is unclear whether Carlisle is possibly implying that electric or electric over hydraulic brake systems

may have a more proportional trailer braking force. Carlisle provided no explanation of what they mean by use of the word ''proportionate,'' and how their system is more or less safe than surge brakes, or how that relates to jack-knifing.

Surge brakes by their physical design apply a braking force proportional to that generated by the towing vehicle, that varies whether empty or loaded to any weight up to its GVWR. In contrast, the brake gain set on the controller for electric and electric over hydraulic brake systems has to be manually adjusted based on the load being carried by trailers equipped with those systems, and the driving conditions. This is a different meaning for the word proportionate. It is not apparent from Carlisle's comments how electric or electric over hydraulic brakes on a trailer would prevent it from jack-knifing in wet or icy conditions. Historically, a major cause of jack-knifing was locking up the brakes on the rear axle of the towing vehicle, now addressed by ABS systems.

(b)(i) The availability of alternative braking systems is not germane to determining whether surge brake systems meet FMCSA's safety performance requirements.

(ii) Carlisle's assertion that towing vehicles are wired for easy installation of in-cab electric brake controllers appears to be a reference to the common manufacturing practice of installing wiring harnesses that can accommodate optional equipment, such as a controller for electric trailer brakes. Carlisle fails to mention the cost and difficulty of purchasing and installing a controller in the cab of the towing vehicle. A brake expert on a specific model year truck could perhaps install a controller in 15 minutes. However, thousands of trailer rental companies are unlikely to (1) have such expertise readily available, or (2) stock appropriate controllers for all electric brake systems. While the Agency does not consider the installation of electric brake controllers ''easy'' based on the above, the availability of alternative brake systems is not related to the issue of whether surge brake systems meet the performance requirements of the FMCSRs.

(c) The rule requiring a single control valve (§ 393.49) is designed to enhance safety. The Coalition's petition argued that the actual, operational safety performance of surge-braked trailers demonstrates that this rule need not be applied to surge-braked trailers. FMCSA granted the petition for a rulemaking and via that process has now concluded that surge brakes are safe, when limited to certain GVWR ratios.

(d) Carlisle's concern about the ability of customers and enforcement personnel to verify that the trailer brakes are working was shared by MDSHA/MCD below. There are ways to verify that trailer brakes are operational. The following examples illustrate this:

Canada allows surge-braked trailers to be used for commercial purposes. Enforcement officers in the Provinces begin by making a visual inspection of the brake components. They perform the on-road inspection specified for hydraulic brakes in the NAS Out-of-Service criteria. Just as for all other hydraulically braked vehicles, this includes checking for leaks in the hydraulic system, sufficient fluid in the actuator/master-cylinder reservoir, and whether there are any unusual component conditions.

Then, if anything in the visual inspection causes concern, it is possible to physically test the trailer's hydraulic brake system. This is because combination vehicles—including trailers equipped with surge brake systems—must also meet the operational brake performance requirement of § 393.43(d) for trailer breakaway and emergency braking. A trailer equipped with surge brakes meets this requirement only if it also includes an emergency release mechanism that would be actuated on a breakaway. The standard design for surge brake actuators is for that emergency breakaway capability to work through the hydraulic actuator to apply the wheel brakes. In some designs the emergency release mechanism can be manually actuated, and a simple determination can then be made whether the brakes are operational, either by attempting to move the trailer, or by jacking up a trailer wheel and attempting to rotate the tire. In other designs, a different procedure is used.

Information on applying these approaches is available from the manufacturers of the surge brake actuators. FMCSA is convinced this two-stage inspection procedure is adequate for pre-trip and roadside inspections to insure safety of the braking function.

The current NAS Out-of-Service criteria gives nine different items the inspector is to check at the roadside for a vehicle with a hydraulic system. The instructor and student guide give more details on how to carry out inspections for these criteria.

Instructions very similar to this already exist in the CVSA NAS Out-of-Service criteria for a Level 1 inspection of electric brakes. The current instructor and student guides for the NAS Out-of-Service criteria read:

> Electric brakes can be checked for operation by activating a manual control in the cab without activating the tractor's service brakes, and attempting to move the vehicle while the brakes are applied.

The Agency will ask CVSA to update the Out-of-Service criteria to reflect this rule's change in the meaning of § 393.48(a), allowing surge brakes, and to provide comparably explicit guidance for inspecting surge-braked trailers as part of the NAS Instructor and Student guides for Inspection criteria.

5. MDSHA/MCD commented that in 2004, Maryland Vehicle Law was modified by working with the trailer manufacturing industry to allow trailers and semi-trailers less than 10,000 pounds equipped with surge brakes to be used on Maryland highways, but limited to combination vehicles in intrastate commerce that would not require a CDL.

(a) MDSHA/MCD takes exception to allowing the use of surge brakes on trailers over 10,000 pounds operated in interstate commerce, contending that the very limited testing of a few vehicle combinations fails to justify revising the standards that currently apply. (i) MDSHA/MCD states the tests performed were not comprehensive enough and addressed only four towing vehicle and trailer combinations. (ii) MDSHA/MCD notes that since the NPRM proposed that a trailer may have a GVWR up to 20,000 pounds, a combination vehicle could include larger or smaller types of vehicles, including cargo type vans normally used by small construction and/or landscaping companies. MDSHA/MCD notes that these, as well as other, vehicles were not tested nor was data provided to substantiate that towing vehicles like cargo vans would be able to meet similar requirements for braking in curve from 30 mph, service brakes holding on a 20 percent uphill grade, and straight line stopping distance from 20 mph. (iii) MDSHA/MCD stated that no tests were conducted using towing vehicles that were not equipped with anti-lock braking systems (ABS). (iv) MDSHA/MCD contends that the amendments proposed in the NPRM do not address the GCW for the combinations tested, but only the GVWR ratio for the towing units and trailers equipped with surge brakes. MDSHA/MCD believes that the limited testing by the Coalition is not representative of the range of real-world applications.

(b) MDSHA/MCD is concerned that if the proposed amendments are adopted, enforcement personnel would be unable

to determine if the surge brake system is working properly.

MDSHA/MCD noted that 49 CFR 396.17 provides that periodic inspections shall be conducted covering those ''accessories set forth in Appendix G of this subchapter.'' However, MDSHA/MCD states that a review of Appendix G fails to reveal any guidance and/or methodology for conducting an inspection of any ''surge brake'' component to determine that it is working and/or maintained correctly to some unidentified accepted standards, e.g., SAE standards. MDSHA/MCD believes that this omission jeopardizes safety and, absent any guidance, owners and operators have no way of knowing what methods should be employed to assure that the surge brake equipment is functioning properly.

(c)(i) MDSHA/MCD, like Carlisle, commented that tests were not conducted on wet or icy surfaces to determine what could potentially occur when surge brakes are applied.

(ii) MDSHA/MCD expressed concern that during brake application under wet or icy road conditions, forward inertia could cause the surge brake to lock up and the operator to lose control of the combination vehicle. With electric or other brakes, by contrast, MDSHA/MCD maintains the operator has the ability to correct a brake lock condition by lifting his/her foot off the brake pedal.

(d) MDSHA/MCD believes that the revisions to § 393.48 are flawed, as the proposed amendment to paragraph (a) exempts surge brakes; therefore, they do not have to work or be capable of working. MDSHA/MCD contends that § 393.5 needs to be reworded to reflect that a vehicle and combinations must be equipped with brakes that are operative. In addition, MDSHA/MCD believes that wording to the effect that brakes must at all times be capable of operating should not exclude any system regardless of braking type, as does the proposed language.

FMCSA Response: (a)(i) As explained in the background information, the test data submitted by the Coalition meets what FMCSA believes are reasonable requirements for evaluating the safety performance of trailer surge brake systems. The Coalition's additional analysis for trailers in the range of 14,600 to 20,000 pounds GVWR demonstrates that these trailers, subject to the GVWR ratio limitation of this rule, meet the safety performance criteria for these braking systems. FMCSA has determined that the combination of tests performed and analysis submitted are sufficiently rigorous, and that no further tests or analysis are required to establish this performance.

(ii) The other types of vehicles MDSHA/MCD mentioned, including cargo vans, are normally built on a chassis similar to that of a pick-up truck in that vehicle's class, with similarly sized brake components meeting the FMVSS No. 105 requirement. For example, the light truck tested was a Chevrolet C–1500, which serves as the light truck chassis for the cargo vans built by GM in that model size class. Cargo vans built on light truck chassis have the same braking system and thus stopping ability of the truck chassis they are built on. The agency points out that vehicles like the C–1500 are required by FMVSS No. 105 to have a shorter stopping distance than larger vehicles over 10,000 pounds.

Further, for the even smaller cargo vans that are built on a truck chassis like the Chevrolet S–10 pick-up truck, all such vehicles less than 3,500 kilograms (7,716 pounds) are required by FMVSS No. 135 to have the same stopping distance performance as required by FMVSS No. 105 for light trucks over 7,716 pounds and less than 10,000 pounds.

The Agency concluded that the braking characteristics of other towing vehicles, such as cargo vans, will be similar to that of the vehicles tested by EFAA. As long as the towing vehicle meets the applicable FMVSS standard, and the combination meets the GVWR ratios of this rule, all evidence demonstrates that such combinations will have braking system performance similar to the vehicles tested by the Coalition.

(iii) As explained above, there is no justification for requiring a different testing standard for surge brakes than for electric brakes. Trucks manufactured before March 1, 1999, when the requirement for ABS brake took effect (see § 393.55), have always been allowed to tow trailers with electric brakes. These vehicles will be equally safe when towing surge-braked trailers, within the GVWR ratios required by this rule.

(iv) MDSHA/MCD may have been confused by the repeated use of the term GVWR in the NPRM. The Coalition tested a variety of simulated GVWR combinations by loading the trailers to different weights. These were selected to be representative of or simulate different GVWR combinations in order to test the safety performance of the associated surge brake systems. The combinations were tested at simulated towing vehicle to trailer weight/GVWR ratios from 1:1 up to 1:2. FMCSA believes that the data provided by the Coalition thoroughly address the concern of MDSHA/MCD that vehicles be tested at a wide range of GCWs.

(b) Since Maryland allows surge brake systems on trailers up to 10,000 pounds GVWR in intrastate commerce, at least some of the larger trailers are used as part of combination vehicles over 10,000 pounds. It appears Maryland felt surge-braked trailers operating in intrastate commerce are safe without needing a roadside inspection program. Such a program is feasible, as the response to Carlisle under section 4(d) above demonstrates.

Appendix G to Chapter III, Subchapter B of title 49, identifies hydraulic brake components that must be checked. FMCSA believes inspection of surge brakes should begin with these hydraulic brake components. If compromised components are found by the first stage inspection, it would then be appropriate or necessary to perform a second stage performance inspection.

(c)(i) As discussed above under section 2(c) of the Agency's response to Mr. Hansel, the performance regulations require the testing to be conducted under dry conditions.

(ii) The theory that under icy conditions the surge brakes of the trailer could lock up requires an assumption that the towing vehicle has enough friction with the road to create a deceleration force on the trailer actuator. Thus, the towing vehicle would have to have better friction contact with the road than the trailer. While this could momentarily be true, the combination is traveling down the road, and the trailer wheels will encounter exactly the same friction contact that the towing vehicle just passed over. Thus, as the trailer wheels move forward that might have momentarily locked up on ice, they will encounter the greater traction just experienced by the towing vehicle. And as MDSHA/MCD pointed out, the operator has the ability to correct a brake lock condition by lifting his/her foot off the brake pedal.

(d) The MDSHA/MCD expressed concern that the exemption in § 393.48(d) would mean that surge brakes do not have to operate. The NPRM pointed out that surge brakes will still be subject to the performance requirements of § 393.52(d), which served as guidance for the tests performed by the Coalition. The NPRM said:

> The Agency emphasizes that the granting of the petition for rulemaking, and subsequent proposal to amend §§ 393.48 and 393.49 should not be construed as an exception to the brake performance requirements under § 393.52. Therefore,

adoption of a final rule would not relieve motor carriers of their responsibility to ensure that any commercial motor vehicle, or combination of commercial motor vehicles, operated in interstate commerce, comply with the brake performance requirements under § 393.52.

The NPRM and this final rule also contain a new § 393.40(b)(5) requiring surge braked trailers to comply with the same existing provisions required for electric brakes. However, to further clarify that the surge brakes must operate, FMCSA has added an additional paragraph to the reformatted § 393.48(d) to read as follows:

(4) The surge brakes must meet the requirements of § 393.40.

6. The American Trucking Associations, Inc. (ATA), on behalf of its members that manufacture commercial vehicles, expressed the same concern as TMA above regarding the lack of parking-brake capability with surge brakes, and the potential that the parking brake system on the towing vehicle could be overloaded, thus, creating a roll-away situation. ATA believes this is reason enough to continue to ban the use of surge brakes on commercial vehicles where they are more likely to be used beyond the towing vehicles' rated capacities. ATA believes that additional parking brake

Testing should be completed on situations where the trailer has the maximum proposed gross vehicle weight rating of 1.75 times the weight of the towing vehicle for 12,000 pounds or less, and 1.25 times the weight of the towing vehicle for 12,000–20,000 pounds GVWR to verify if the towing vehicle has the capacity to hold the combined weight. This testing may have to include a variety of makes and models as individual vehicles from different manufacturers can have performance variations.

FMCSA Response: ATA's concern regarding parking brakes is the same as that addressed in the response to TMA above.

7. Advocates for Highway and Auto Safety (Advocates) opposed the proposed rulemaking on the grounds that FMCSA moved the petition immediately into rulemaking, rather than preliminarily asking for comments and views on the wisdom of changing current regulations to permit this technology. Advocates regards the subject rulemaking proposal

both as inadequate and premature, as well as failing to meet the agency's basic responsibilities to conduct its own investigations and make its own determinations about the merits of major changes to its safety regulations. Moreover, the agency has failed to offer this petition for public evaluation in a timely manner through an earlier notice asking for preliminary information that would be relevant to determining whether to propose changes to the FMCSR and exactly what changes are documented by the agency's own tests to be in the public interest to advance motor carrier and commercial vehicle safety.

Advocates contend that a proposed rule is not the occasion for requesting comment on whether additional analysis is needed to support the petitioner's assertions.

FMCSA Response: FMCSA followed established procedures in this rulemaking. Section 389.31, Petitions for Rulemaking, specifies that any interested person may petition the Administrator to establish, amend, or repeal a rule. Each petition filed must set forth the text or substance of the rule or amendment proposed, and include any information or arguments available to support the action. The Coalition filed such a petition, and it contained their requested regulatory changes and their data supporting the safety performance of their request.

FMCSA determined in accordance with § 389.33(b) that the petition appeared to have merit, and the Administrator, therefore, notified the Coalition their petition for rulemaking was granted.

FMCSA subsequently issued the NPRM, asking for specific data regarding trailers over 14,600 pounds. The NPRM is the official opportunity for the public to provide comments or data relevant to the proposed rule. There is nothing unusual about asking potential commenters who may possess data or analysis to share it with an agency, nor is there any requirement of administrative law that an agency digest and republish for an additional round of comments all data submitted in response to an NPRM.

IV. Summary

1. As specified in Part 389, the Surge Brake Coalition submitted a petition for rulemaking containing safety performance test data supporting their contention that surge-braked trailers meet the safety performance requirements of Part 393, and, thus, should not be prescriptively excluded.

2. FMCSA determined that the test data supported the contention of the Coalition, and that a rulemaking on this subject was warranted. Therefore, FMCSA granted the petition for a rulemaking.

3. FMCSA then developed and issued an NPRM putting forth the proposal and asking for any additional information from the public. In particular, FMCSA requested data regarding the safety performance of trailers with a GVWR greater than 14,600 pounds.

4. FMCSA analyzed all information submitted to the docket and developed this final rule specifying that surge-braked trailers subject to the specified GVWR ratios are allowed as part of combination commercial motor vehicles operating in interstate commerce.

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because it is the subject of both a regulatory reform nomination and an industry petition. This rule has generated a significant amount of public interest and has been listed in the 2005 ''Regulatory Reform of the U.S. Manufacturing Sector'' as published by the Office of Management and Budget. We expect the rule will have minimal costs and small benefits that outweigh the costs. The Agency has prepared a regulatory analysis of the costs and benefits of this rulemaking action. A copy of the analysis is included in the docket referenced at the beginning of this document.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA considered the effects of this regulatory action on small entities and determined that this final rule has a minimal, but positive impact on a substantial number of small entities. This is because it removes a regulatory obstacle to the use of surge brakes on small and medium trailers. There are over 150 firms that manufacture trailers, about 300 firms that are in the boat delivery service, thousands of landscape and construction firms that may use trailers, and over 2,000 rental equipment firms that may offer trailers for rent. The majority of these firms are small businesses according to the definition provided by the Small Business Administration. No entity is required to use surge brakes, and those currently using electric or other types of brakes have the option to continue with no change.

This final rule allows a braking system that was not allowed in interstate commerce for a number of years. Many businesses use small or medium trailers in their daily operations; if these operations are in interstate commerce, and the vehicle combination meets the definition of CMV (49 CFR 390.5), they are subject to the FMCSRs, which previously did not allow the use of surge brakes. CMVs

towing such trailers are most likely to be operated in interstate commerce if the operation is near a State boundary. This final rule establishes uniformity without compromising safety. It removes the dilemma faced by numerous State agencies responsible for motor carrier safety of enforcing Federal regulations prohibiting the use of surge brakes on trailers operated in interstate commerce, while allowing identical trailer combinations to operate on the same roads, under the same conditions, in intrastate commerce.

Accordingly, FMCSA certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that results in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128 million or more in any 1 year.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

In accordance with E.O. 13175, we evaluated possible effects on federally recognized Indian tribes and have determined there are no effects.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rulemaking does not create an environmental risk to health or safety disproportionately affecting children.

Executive Order 12630 (Taking of Private Property)

This rulemaking does 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.

Executive Order 13132 (Federalism)

This action was analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FMCSA determined this rulemaking does not have a substantial direct effect on States, nor does it limit the policy-making discretion of the States. Nothing in this document preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This rulemaking does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

National Environmental Policy Act

The Agency analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and determined this action does not have an effect on the quality of the environment. However, an environmental assessment (EA) supporting this conclusion was prepared because the rulemaking is not among the type covered by a categorical exclusion. A copy of the environmental assessment is included in the docket listed at the beginning of this notice.

Executive Order 13211 (Energy Effects)

The Agency analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency determined it would not be a ''significant energy action'' under that Executive Order because it is not economically significant and does not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers and Motor vehicle safety.

VI. Regulatory Language for the Final Rule

■ In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

■ 2. Amend § 393.5 by adding a new definition for ''Surge Brake'' in alphabetical order to read as follows:

§ 393.5 Definitions.

* * * * *

Surge Brake. A self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer, to slow down or stop the towed vehicle.

* * * * *

■ 3. Amend § 393.40 by adding paragraph (b)(5), a new specification of ''Surge brake systems,'' to read as follows:

§ 393.40 Required brake systems.

* * * * *

(b) * * *

(5) *Surge brake systems.* Motor vehicles equipped with surge brake systems must have a service brake system that meets the applicable requirements of §§ 393.42, 393.48, 393.49, and 393.52 of this subpart.

* * * * *

■ 4. Amend § 393.48 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 393.48 Brakes to be operative.

(a) *General rule.* Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

(b) * * *

(c) * * *

(d) *Surge brakes.* (1) Surge brakes are allowed on:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; and

(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, when its GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

(2) The gross vehicle weight (GVW) of a trailer equipped with surge brakes may be used instead of its GVWR to calculate compliance with the weight

ratios specified in paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.

(3) The GVW of a trailer equipped with surge brakes must be used to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.

(4) The surge brakes must meet the requirements of § 393.40.

■ 5. Revise § 393.49 to read as follows:

§ 393.49 Control valves for brakes.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, every motor vehicle manufactured after June 30, 1953, which is equipped with power brakes, must have the braking system so arranged that one application valve must when activated cause all of the service brakes on the motor vehicle or combination motor vehicle to operate. This requirement must not be construed to prohibit motor vehicles from being equipped with an additional valve to be used to operate the brakes on a trailer or trailers or as required for busses in § 393.44.

(b) *Driveaway-Towaway Exception.* This section is not applicable to driveaway-towaway operations unless the brakes on such operations are designed to be operated by a single valve.

(c) *Surge brake exception.* This requirement is not applicable to trailers equipped with surge brakes that satisfy the conditions specified in § 393.48(d).

Issued on: February 26, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–3815 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 72, No. 43
Tuesday, March 6, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number AMS–TM–06–0222; TM–04–07PR]

RIN 0581–AC51

National Organic Program, Sunset Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) regulations to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) from November 17, 2005 through October 19, 2006. The recommendations addressed in this proposed rule pertain to the continued exemption (use) and prohibition of 169 substances in organic production and handling. Consistent with the recommendations from the NOSB, this proposed rule would renew 166 of the 169 exemptions and prohibitions on the National List (along with any restrictive annotations), and remove 3 exemptions from the National List.

DATES: Comments must be received by May 7, 2007.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- *Mail:* Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- *Internet: www.regulations.gov.*
- Written comments on this proposed rule should be identified with the docket number TM–04–07. Commenters should identify the topic and section number of this proposed rule to which the comment refers.
- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.
- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, or Internet, available for viewing on the regulations.gov homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Toni Strother, Agricultural Marketing Specialist, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

The Organic Foods Production Act (OFPA), 7 U.S.C. 6501 *et seq.*, authorizes the establishment of the National List of allowed and prohibited substances. The National List identifies synthetic substances (synthetics) that are exempted (allowed) and nonsynthetic substances (nonsynthetics) that are prohibited in organic crop and livestock production. The National List also identifies nonsynthetics and synthetics that are exempted for use in organic handling.

The exemptions and prohibitions granted under the OFPA are required to be reviewed every 5 years by the NOSB. The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If they are not reviewed by the NOSB within 5 years of their inclusion on the National List and renewed by the Secretary, their authorized use or prohibition expires. This means that a synthetic substance exempted for use on the National List in 2002 and currently allowed for use in organic production will no longer be allowed for use after October 21, 2007; a non-synthetic substance prohibited from use on the National List in 2002 and currently prohibited from use in organic production will be allowed after October 21, 2007; and a synthetic or nonsynthetic substance exempted for use on the National List and currently allowed for use in organic handling will be prohibited after October 21, 2007.

In response to the sunset provisions in the OFPA, the Secretary published an Advanced Notice of Proposed Rulemaking (ANPR) (70 FR 35177) in the **Federal Register** on June 17, 2005, to announce the review of 174 exemptions and prohibitions authorized under the National Organic Program regulations. This ANPR also requested public comment on the continued use or prohibition of such exemptions and prohibitions. The public comment period lasted 60 days.

We received approximately 350 comments. Comments were received from consumers, producers, certifying agents, trade associations, retailers, organic associations, animal welfare organizations, consumer groups, the NOSB, and various industry groups.

In general, we received comments urging the current list to remain intact as it currently exists with many providing specific focused support for materials that they promoted, represented, or relied upon. One commenter strongly advocated for a careful review of the materials up for sunset review and not just a blanket approval. In particular, the commenter emphasized the need for additional technical review of the general categories of flavors, colors, vitamins and minerals used in handling; aquatic plant products, fish products, humic acid derivatives, antibiotics used in crops; and chlorine materials used as sanitizers in crops, livestock and handling.

The NOSB reviewed the comments received on the ANPR and used the comments to make recommendations to the Secretary regarding the continued use and prohibition of the 169 substances under review. Three meetings were held for the NOSB to deliberate and make recommendations to the Secretary. The first meeting was held on November 16–17, 2005, in

Washington, DC. The second meeting was held on April 19–20, 2006, in State College, PA. The third meeting was held on October 17–19, 2006, in Arlington, VA. All three meetings were open to the public and additional comments were received during the meetings.

As a result of the November 2005, and 2006 April and October NOSB meetings, the NOSB recommended that the Secretary renew 166 of the 169 exemptions and prohibitions on the National List; and remove 3 exemptions from the National List. These recommendations are limited to those exemptions and prohibitions that were originally included on the National List on October 21, 2002. The Secretary is engaging in this proposed rulemaking to reflect the recommendations of the NOSB, from November 2005, April 2006, and October 2006, and request public comment.

Under the authority of the OFPA, as amended, (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended four times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 CFR 61217) and September 11, 2006 (71 FR 53299).

II. Overview of Proposed Amendments

From November 17, 2005, through October 19, 2006, the NOSB reviewed 169 exemptions and prohibitions that are authorized on the National List and set to expire on October 21, 2007. [In the ANPR announcing this sunset review of substances (70 FR 35177, June 17, 2005), the original count of substances was quoted at 174 substances; however, there were a number of substances counted in technical error. As a result, the count has been corrected to reflect a total of 169 substances under review during this sunset process.] Using the evaluation criteria specified in the ANPR for sunset review, the NOSB reviewed these exemptions and prohibitions for continued authorization in organic agricultural production and handling. As a result of the NOSB's review, the NOSB recommended that the Secretary renew 166 of the 169 exemptions and prohibitions. In addition, the NOSB recommended that 3 exemptions not be renewed.

With respect to the criteria used to make recommendations regarding the continued authorization of exemptions and prohibitions, the NOSB agreed that decision making would be based on public comments and applicable supporting evidence that expressed a continued need for the use or prohibition of the substance(s).

Concerning criteria used to make recommendations regarding the discontinuation of an authorized exempted synthetic substance or prohibited nonsynthetic substance, the NOSB agreed that decision making, for the exempted synthetic substance, would be based on public comments and applicable supporting evidence that demonstrated the currently authorized exempted or prohibited substance is (a) harmful to human health or the environment, (b) not necessary to the production of the agricultural products because of the availability of wholly nonsynthetic substitute products, or (c) inconsistent with organic farming and handling.

In the case of recommendations to discontinue prohibitions of nonsynthetic substances, the NOSB agreed that decision making would be based on public comments and applicable supporting evidence demonstrating that the prohibited nonsynthetic substance is no longer harmful to human health or the environment and is consistent and compatible with organic practices.

Renewals

After considering all public comments and supporting evidence, the NOSB determined that 166 out of the 169 exemptions and prohibitions demonstrated a continued need for authorization in organic agricultural production and handling. Based on the recommendations from the NOSB concerning substances identified for review under this sunset review process, this proposed rule would amend the USDA's National regulations (7 CFR part 205) to renew exemptions and prohibitions of the following substances in organic agricultural production and handling (use categories and any restrictive annotations remain unchanged, but have been omitted from this overview):

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

1. Ethanol.
2. Isopropanol.
3. Calcium hypochlorite.
4. Chlorine dioxide.
5. Sodium hypochlorite.
6. Hydrogen peroxide.
7. Soap-based algicide/demossers.
8. Herbicides, soap-based.
9. Newspaper or other recycled paper, without glossy or colored inks.
10. Plastic mulch and covers.
11. Newspapers or other recycled paper, without glossy or colored inks.
12. Soaps, ammonium.
13. Ammonium carbonate.
14. Boric acid.
15. Elemental sulfur.
16. Lime sulfur-including calcium polysulfide.
17. Oils, horticultural-narrow range oils as dormant, suffocating, and summer oils.
18. Soaps, insecticidal.
19. Sticky traps/barriers.
20. Pheromones.
21. Sulfur dioxide.
22. Vitamin D_3.
23. Copper hydroxide.
24. Copper oxide.
25. Copper oxychloride.
26. Copper sulfate.
27. Hydrated lime.
28. Hydrogen peroxide.
29. Lime sulfur.
30. Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils.
31. Potassium bicarbonate.
32. Elemental sulfur.
33. Streptomycin.
34. Tetracycline (oxytetracycline calcium complex).
35. Aquatic plant extracts (other than hydrolyzed).
36. Elemental sulfur.
37. Humic acids.
38. Lignin sulfonate.
39. Magnesium sulfate.
40. Soluble boron products.
41. Sulfates.
42. Carbonates.
43. Oxides.
44. Silicate of zinc.
45. Silicate of copper.
46. Silicate of iron.
47. Silicate of manganese.
48. Silicate of molybdenum.
49. Silicate of selenium.
50. Silicate of cobalt.
51. Liquid fish products.
52. Vitamin B_1.
53. Vitamin C.
54. Vitamin E.
55. Ethylene gas.
56. Lignin sulfonate.
57. Sodium silicate.
58. EPA List 4-Inerts of Minimal Concern.

Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

1. Ash from manure burning.
2. Arsenic.
3. Lead salts.
4. Potassium chloride.
5. Sodium fluoaluminate (mined).
6. Sodium nitrate.
7. Strychnine.
8. Tobacco dust (nicotine sulfate).

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

1. Ethanol.

2. Isopropanol.
3. Aspirin.
4. Vaccines.
5. Chlorhexidine.
6. Calcium hypochlorite.
7. Chlorine dioxide.
8. Sodium hypochlorite.
9. Electrolytes.
10. Glucose.
11. Glycerine.
12. Hydrogen peroxide.
13. Iodine.
14. Magnesium sulfate.
15. Oxytocin.
16. Ivermectin.
17. Phosphoric acid.
18. Copper sulfate.
19. Iodine.
20. Lidocaine.
21. Lime, hydrated.
22. Mineral oil.
23. Procaine.
24. Trace minerals.
25. Vitamins.
26. EPA List 4-Inerts of Minimal Concern.

Section 205.604 Nonsynthetic Substances Prohibited for Use in Organic Livestock Production

1. Strychnine.

Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients In or On Processed Products Labeled As ''Organic'' or ''Made With Organic (Specified Ingredients or Food Groups(s))''

(a) Nonsynthetics allowed:
1. Alginic acid.
2. Citric acid.
3. Lactic acid.
4. Bentonite.
5. Calcium carbonate.
6. Calcium chloride.
7. Carageenan.
8. Dairy cultures.
9. Diatomaceous earth.
10. Enzymes.
11. Flavors.
12. Kaolin.
13. Magnesium sulfate.
14. Nitrogen-oil-free grades.
15. Oxygen-oil-free grades.
16. Perlite.
17. Potassium chloride.
18. Potassium iodide.
19. Sodium bicarbonate.
20. Sodium carbonate.
21. Carnauba wax.
22. Wood resin wax.
23. Autolysate yeast.
24. Bakers yeast.
25. Brewers yeast.
26. Nutritional yeast.
27. Smoked yeast.
(b) Synthetics allowed:
1. Alginates.
2. Ammonium bicarbonate.
3. Ammonium carbonate.
4. Ascorbic acid.
5. Calcium citrate.
6. Calcium hydroxide.
7. Monobasic calcium phosphates.
8. Dibasic calcium phosphates.
9. Tribasic calcium phosphates.
10. Carbon dioxide.
11. Calcium hypochlorite.
12. Chlorine dioxide.
13. Sodium hypochlorite.
14. Ethylene.
15. Ferrous sulfate.
16. Monoglycerides.
17. Diglycerides.
18. Glycerin.
19. Hydrogen peroxide.
20. Lecithin—bleached.
21. Magnesium carbonate.
22. Magnesium chloride.
23. Magnesium stearate.
24. Nutrient vitamins.
25. Nutrient minerals.
26. Ozone.
27. Pectin (low-methoxy).
28. Phosphoric acid.
29. Potassium acid tartrate.
30. Potassium carbonate.
31. Potassium citrate.
32. Potassium hydroxide.
33. Potassium iodide.
34. Potassium phosphate.
35. Silicon dioxide.
36. Sodium citrate.
37. Sodium hydroxide.
38. Sodium phosphates.
39. Sulfur dioxide.
40. Tocopherols.
41. Xanthan gum.

Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients In or On Processed Products Labeled as ''Organic''

1. Cornstarch (native).
2. Gums—water extracted only (arabic, guar, locust bean, carob bean).
3. Kelp—for use only as a thickener and dietary supplement.
4. Lecithin—unbleached.
5. Pectin (high-methoxy).

Nonrenewals

Based on recommendations from the NOSB concerning substances identified for review under this sunset review process, this proposed rule would amend the USDA's National List to remove exemptions (and any restrictive annotations) for the following substances in organic agricultural production and handling:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

Milk replacers without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals.

A milk replacer is a formula (powdered or liquid) designed to take the place of natural mother's milk by supplying the nutritional needs of the baby animal during the critical, early nursing stage of its life. Milk replacers traditionally contain milk-based ingredients as their major source of protein. However, as more milk proteins are being used by the human food industry, milk proteins are becoming more and more expensive to source.

The NOP regulations, at § 205.237(a), state that ''The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and, if applicable, organically handled: *Except*, That, nonsynthetic substances and synthetic substances allowed under § 205.603 may be used as feed additives and supplements.'' In relation to this requirement, the National List, at § 205.603(c), provides that nonorganic milk replacers, without antibiotics and not from nonmilk products or products from Bovine somatotropin treated animals may be used, for emergency use only, as a feed supplement in organic livestock production. Due to the concern for the commercial availability of organic milk at the time of publication of the NOP regulations (December 21, 2000), this exemption was considered necessary to protect the interests of organic livestock producers and the health of organic young calves.

In reviewing public comments and evidence regarding the continued authorization of the use of milk replacers in organic agricultural livestock production, the NOSB determined that nonorganic milk replacers should no longer be permitted for use in organic livestock production. The NOSB based their decision on input and testimonies from organic livestock producers which stated that the use of such nonorganic agricultural feed supplements were not a necessity or widely utilized in organic livestock production. They also suggested that organic milk is commercially available and should be used to feed young animals that may need to be fed a milk replacer during their early stages of development. Since the full implementation of the NOP regulations and approximately four years of certified organic livestock production under such regulations, commenters expressed that there were not many emergency cases that justified the use of nonorganic milk replacers above organic

milk in the production of organic dairy animals.

There were a few comments that suggested that nonorganic milk replacers should remain available for use in organic livestock production. Such comments provided that it would be more expensive to use organic milk as a milk replacer than nonorganic milk because organic milk is a highly valued commodity for human consumption. Therefore, it would present more of an economic challenge to farmers to feed saleable organic milk to an animal, rather than selling the milk for human consumption.

After considering all input from the public and any applicable evidence, the NOSB maintained that nonorganic milk replacers should no longer be permitted as an authorized substance for use in organic livestock production, due to the availability of organic milk and the requirements in the regulations that require the feeding of organic agricultural feed to organically produced livestock. Therefore, the Secretary accepts the NOSB's recommendation and proposes not to renew the exemption for the use of nonorganic milk replacers in § 205.603(c) of the National List.

Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients In or On Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Groups(s))''

Colors-nonsynthetic sources only.

The NOSB voted not to renew the exemption to permit the use of nonsynthetic colors in organic handling. In considering whether to renew the exemption of nonsynthetic colors, many concerns were raised for the NOSB. First, the NOSB reflected on the fact that the OFPA states that the National List, established by the Secretary, shall be based upon a proposed National List or proposed amendments to the National List developed by the NOSB. In relation to that provision of the OFPA, the NOSB was made aware that nonsynthetic colors never received a formal recommendation by the NOSB to be included on the National List. Nonsynthetic colors were erroneously included in the final rule. As a result, the NOSB received several comments to remove the category of nonsynthetic colors from the National List, as nonsynthetic colors should be evaluated by the NOSB through the petition process.

Secondly, the NOSB took comments into account that raised concern about how the broad category of ''nonsynthetic colors'' produces difficulty in determining and verifying what colors are truly nonsynthetic versus synthetic and how such ambiguity could give rise to the use of inappropriate substances in organically handled products.

In addition, the NOSB also deliberated on the historical fact that nonsynthetic colors had been permitted for use by the organic industry for over five years. As a result, commenters raised a general concern that removing nonsynthetic colors from the National List could cause a disruption in the manufacture of organic products in the organic handling sector.

Taking all of these concerns into consideration, the NOSB decided that it would not affirm or deny the re-authorization of nonsynthetic colors on the National List at its April 2006 meeting. Instead, the NOSB decided that it would provide the industry a window of opportunity to petition the addition of nonsynthetic colors on the National List before the finalization of the Sunset Review process. As of the October 2006 meeting, nine individual and groups of colors had been petitioned for consideration as nonsynthetic on § 205.605(a), and as agricultural, but not commercially available as organic, on § 205.606, of the National List. In addition, the NOSB considered that in the absence of an initial recommendation from the NOSB to permit the addition of nonsynthetic colors as a broad category that they could not continue to permit the exemption of nonsynthetic colors on § 205.605(a). As a result, the NOSB voted not to renew the exemption of nonsynthetic colors on § 205.605(a) and that they not be permitted for use in organic handling. Therefore, the Secretary accepts the NOSB's recommendation and proposes not to renew the exemption for the use of colors, nonsynthetic on § 205.605(a) of the National List.

Potassium tartrate made from tartaric acid.

The NOSB recommended to remove ''Potassium tartrate made from tartaric acid'' from § 205.605(b) of the National List. The NOP regulations, at § 205.605(b), authorize the use of Potassium tartrate made from tartaric acid in organic handling. Comments were submitted concerning the continued need for this authorization. Based on information received through public comment, the NOSB learned that Potassium tartrate made from tartaric acid is not a term/substance formally recognized or authorized by the Food and Drug Administration (FDA) in food processing and is improperly identified on the National List. Comments suggested that the authorization for Potassium tartrate made from tartaric acid be removed from the National List and be properly referenced as ''Potassium acid tartrate,'' (21 CFR 184.1077), which is already an exempted substance on the National List.

Research demonstrates that the original intent of the NOSB, in 1995, was to authorize the use of ''Potassium tartrate'' (also known as Potassium acid tartrate) in organic handling; however, when the NOSB made its recommendation to the Secretary, its recommendation included language suggesting the Secretary authorize the use of ''Potassium acid tartrate (or potassium tartrate made from tartaric acid)'' on the National List for organic handling. As a result of the NOSB recommendation, the NOP, when finalizing the National List in December 2000, included both references of the substance (Potassium acid tartrate and Potassium tartrate made from tartaric acid) on the National List and created a situation of unnecessary duplication, as the terms were meant to be synonymous. Therefore, the inclusion of the term ''Potassium tartrate made from tartaric acid'' was included in technical error, considering the fact that the FDA regulations do not authorize its use, but, instead, authorize the use of ''potassium acid tartrate''.

Accordingly, in response to the NOSB's recommendation to remove ''Potassium tartrate made from tartaric acid'' from the National List at § 205.605(b), the Secretary accepts the NOSB's recommendation and proposes not to renew the exemption.

III. Related Documents

One advanced notice of proposed rulemaking with request for comments was published in **Federal Register** Notice 70 FR 35177, June 17, 2005, to make the public aware that the allowance of 169 synthetic and non-synthetic substances in organic production and handling will expire, if not reviewed by the NOSB and renewed by the Secretary.

IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated

for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (65 FR 43259, July 13, 200) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under § 2115 of the OFPA (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The effect of this proposed rule would be to allow the continued use of most substances currently listed for use in organic agricultural production and handling. The AMS concludes that this action would have minimal economic impact on small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. This proposed rule would have an impact on a substantial number of small entities.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. By the end of 2004, the number of certified organic crop, livestock, and handling operations totaled nearly 11,400 operations. Based on 2003 data, certified organic acreage increased to 2.2 million acres.

The U.S. sales of organic food and beverages have grown from $1 billion in 1990 to an estimated $12.2 billion in 2004. Organic food sales were projected to reach $14.5 billion in 2005; total U.S. organic sales, including nonfood uses, were expected to reach $15 billion in 2005. The organic industry is viewed as the fasting growing sector of agriculture, representing 2 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year. This growth rate is projected to decline and fall to a rate of 5 to 10 percent in the future.

In addition, USDA has accredited 95 certifying agents provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

The AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of

submitting information or transacting business electronically to the maximum extent possible.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB for the continuation of 166 exemptions and prohibitions contained on the National List of Allowed and Prohibited Substances. This proposed rule also reflects recommendations by the NOSB to discontinue 3 exemptions contained on the National List. A 60-day period for interested persons to comment on this rule is provided.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.603 is revised to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

In accordance with restrictions specified in this section the following synthetic substances may be used in organic livestock production:

(a) As disinfectants, sanitizer, and medical treatments as applicable.

(1) Alcohols.

(i) Ethanol—disinfectant and sanitizer only, prohibited as a feed additive.

(ii) Isopropanol—disinfectant only.

(2) Aspirin—approved for health care use to reduce inflammation.

(3) Biologics—Vaccines.

(4) Chlorhexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.

(5) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(6) Electrolytes—without antibiotics.

(7) Glucose.

(8) Glycerine—Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.

(9) Hydrogen peroxide.

(10) Iodine.

(11) Magnesium sulfate.

(12) Oxytocin—use in postparturition therapeutic applications.

(13) Paraciticides. Ivermectin—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock.

(14) Phosphoric acid—allowed as an equipment cleaner, *Provided,* That, no direct contact with organically managed livestock or land occurs.

(b) As topical treatment, external parasiticide or local anesthetic as applicable. (1) Copper sulfate.

(2) Iodine.

(3) Lidocaine—as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(4) Lime, hydrated—as an external pest control, not permitted to cauterize physical alterations or deodorize animal wastes.

(5) Mineral oil—for topical use and as a lubricant.

(6) Procaine—as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(c) As feed supplements. None.

(d) As feed additives.

(1) DL-Methionine, DL-Methionine-hydroxy analog, and DL-Methionine-hydroxy analog calcium—for use only in organic poultry production until October 21, 2008.

(2) Trace minerals, used for enrichment or fortification when FDA approved.

(3) Vitamins, used for enrichment or fortification when FDA approved.

(e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or a synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(1) EPA List 4—Inerts of Minimal Concern.

(2) [Reserved]

(f) through (z) [Reserved]

§ 205.605 [Amended]

3. In § 205.605, the substance ''colors, nonsynthetic sources only'' is removed from paragraph (a) and the substance ''Potassium tartrate made from tartaric acid'' is removed from paragraph (b).

Dated: February 28, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–3829 Filed 3–5–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27359; Directorate Identifier 2006–NM–042–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This proposed AD would require repetitive high frequency eddy current inspections for cracks of the fuselage skin at stringer 5 left and right between stations 340 and 350, and corrective actions if necessary. This proposed AD results from reports of fatigue cracks in the fuselage skin near stringer 5 between stations 340 and 350. We are proposing this AD to detect and correct fatigue cracking of the fuselage skin near stringer 5. Cracks in this area could join together and result in in-flight depressurization of the airplane.

DATES: We must receive comments on this proposed AD by April 20, 2007.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27359; Directorate Identifier 2006–NM–042–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that, during inspections on certain Boeing Model 747 airplanes, four operators found fatigue cracks in the fuselage skin at stringer 5, between stations 340 and 350. The airplanes had flown 18,000 to 20,000 total flight cycles. The cracks that were found ranged in length from a single crack of 0.25 inch to multiple cracks that were equivalent to a 10-inch long crack. Skin cracks in this area could join together and result in in-flight depressurization of the airplane.

Other Relevant Rulemaking

On January 16, 1990, we issued AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990), for certain Boeing Model 747 series airplanes. That AD requires the incorporation of certain structural modifications (reference Boeing Service Bulletin 747–53–2272, Revision 12, dated December 22, 1988, identified in Boeing Document No. D6–35999). We issued that AD to prevent structural failure of the affected airplanes. One of the required modifications of AD 90–06–06 ends the repetitive inspections of certain structures that would also be required by this proposed AD.

On April 1, 2005, we issued AD 2005–08–01, amendment 39–14053 (70 FR 18290, April 11, 2005), for certain Boeing Model 747 series airplanes. That AD requires repetitive inspections; repetitive external detailed inspections for cracks or loose or missing fasteners of certain body skin on the left and right sides of the airplane; an internal detailed inspection for cracking of certain left- and right-side frames and adjacent skin; repetitive high-frequency eddy current (HFEC) inspections of certain body frames between certain body stations; and repairs if necessary. We issued that AD to detect and correct fatigue cracks in the body frames, skin, and other internal structures in fuselage section 41, which could lead to rapid decompression and loss of the structural integrity of the airplane. Paragraph (s) of AD 2005–08–01 refers to Boeing Service Bulletin 747–53–2272, dated January 12, 1987, and any revision through Revision 18, dated May 16, 2002, as the appropriate source of service information for accomplishing the terminating action described in that AD. That terminating action ends the repetitive inspections of certain structures that would also be required by this proposed AD.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006 (referred to hereafter as ''the alert service bulletin''). For airplanes that do not have external skin doublers installed around the left- and right-side Number 3 flight deck windows in accordance with Boeing Service Bulletin 747–53–2272, the alert service bulletin describes procedures for repetitive HFEC inspections for cracks of the external surface of the fuselage skin at stringer 5 left and right, between stations 340 and 350. The alert service bulletin specifies that the HFEC inspections be done at the compliance times specified in the following table.

COMPLIANCE TIMES FOR HFEC INSPECTIONS

Airplane group	Airplane condition	Initial compliance time (whichever occurs later)	Repetitive interval (not to exceed)
Group 1	Fewer than 16,000 total flight cycles.	Before accumulating 16,000 total flight cycles or within 2,000 flight cycles [1].	4,000 flight cycles.
	16,000 or more total flight cycles	Before accumulating 18,000 total flight cycles or within 250 flight cycles [1].	None.
Group 2	Fewer than 20,000 total flight cycle.	Before accumulating 20,000 total flight cycles or within 2,000 flight cycles [1].	4,000 flight cycles.

COMPLIANCE TIMES FOR HFEC INSPECTIONS—Continued

Airplane group	Airplane condition	Initial compliance time (whichever occurs later)	Repetitive interval (not to exceed)
	20,000 or more total flight cycles	Before accumulating 22,000 total flight cycles or within 250 flight cycles [1].	None.

[1] After the date on the alert service bulletin.

The alert service bulletin also describes corrective actions to be done if any crack is found. If the total length of all cracks found is less than 1.0 inch, corrective actions include stop drilling the crack or cracks; and, either installing external skin doublers around the Number 3 flight deck window, or installing a temporary external structural repair manual (SRM) skin repair. If the total length of all cracks found is 1.0 inch or longer, corrective actions include trimming the cracked area of skin and installing a filler; and, either installing external skin doublers around the Number 3 flight deck window and installing a tripler, or installing a temporary external SRM skin repair. The alert service bulletin specifies that the corrective actions should be done before further flight. The alert service bulletin refers to Boeing Service Bulletin 747–53–2272 (currently at Revision 18, dated May 16, 2002) as an additional source of service information for installing the external skin doublers around the left- and right-side Number 3 flight deck windows.

For Group 2 airplanes only: The alert service bulletin describes installing external skin doublers around the left- and right-side Number 3 flight deck windows before accumulating 24,000 total flight cycles or within 250 flight cycles after the effective date of the alert service bulletin, whichever occurs later. This constitutes terminating action for the repetitive HFEC inspections specified in this NPRM.

For Group 1 airplanes only: AD 90–06–06 requires installation of external skin doublers around the Number 3 flight deck windows in accordance with Boeing Service Bulletin 747–53–2272, Revision 12, dated December 22, 1988, at or before 20,000 total flight cycles. This constitutes terminating action for the repetitive HFEC inspections specified in this NPRM.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Alert Service Bulletin.''

Difference Between the Proposed AD and Alert Service Bulletin

The alert service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Clarification of Reporting

Although the alert service bulletin discusses reporting inspection results, the Accomplishment Instructions of the alert service bulletin do not specify sending such a report to Boeing. This proposed AD would not require such reporting.

Costs of Compliance

There are about 281 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 92 airplanes of U.S. registry. The proposed inspection would take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $29,440, or $320 per airplane, per inspection cycle.

For Group 2 airplanes (about 4 of U.S. registry), the mandatory terminating action for the repetitive inspections would take about 1,240 work hours, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the terminating action for U.S. operators is $396,800, or $99,200 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–27359; Directorate Identifier 2006–NM–042–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 20, 2007.

Affected ADs

(b) AD 90–06–06, amendment 39–6490, paragraph A., requires installation of external skin doublers in the area near the flight deck windows for Group 1 airplanes, which ends the repetitive high-frequency eddy current (HFEC) inspections required by this AD only for those airplanes. Installing external skin doublers as required by paragraph (g) of this AD ends certain repetitive inspections of the fuselage skin required by paragraph (f) of AD 2005–08–01, amendment 39–14053, only for the area near the flight deck windows modified by the external skin doublers.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006.

Unsafe Condition

(d) This AD results from reports of fatigue cracks in the fuselage skin near stringer 5 between body stations 340 and 350. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin near stringer 5. Cracks in this area could join together and result in in-flight depressurization of the airplane.

Compliance

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

Inspections and Corrective Actions

(f) For any airplane that has not had external skin doublers installed around the left- or right-side Number 3 flight deck window in accordance with Boeing Service Bulletin 747–53–2272, Revision 18, dated May 16, 2002, or an earlier revision: Do the applicable actions described in paragraphs (f)(1) and (f)(2) of this AD. Do all the actions in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006. Do the actions at the compliance times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2542, dated February 16, 2006, on the side(s) of the airplane on which the doubler installation has not been done; except where the service bulletin specifies compliance times after the date on the service bulletin, this AD requires compliance times after the effective date of this AD. Installing external skin doublers around the left- or right-side Number 3 flight deck windows in accordance with Boeing Service Bulletin 747–53–2272, Revision 18, or an earlier revision; ends the repetitive HFEC inspections required by this paragraph on the side of the airplane on which the doubler is installed. After the effective date of this AD, only Boeing Service Bulletin 747–53–2272, Revision 18, may be used to install the external skin doublers around the left- and right-side Number 3 flight deck windows.

(1) Do a HFEC inspection for cracks of the fuselage skin at stringer 5, between body stations 340 and 350; and do all applicable corrective actions before further flight.

(2) Repeat the HFEC inspection thereafter at the applicable interval specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2542.

Terminating Action

(g) For Group 2 airplanes only: Before accumulating 24,000 total flight cycles, or within 250 flight cycles after the effective date of the AD, whichever occurs later, install external skin doublers around the left- and right-side Number 3 flight deck windows; in accordance with Boeing Service Bulletin 747–53–2272, Revision 17, dated November 18, 1999; or Revision 18, dated May 16, 2002. After the effective date of this AD, only Boeing Service Bulletin 747–53–2272, Revision 18, may be used to accomplish the doubler installation around the left- and right-side Number 3 flight deck windows. Accomplishing this action ends the repetitive inspections required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on February 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3842 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25658; Directorate Identifier 2006–NM–054–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

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

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

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain Airbus Model A318, A319, A320, and A321 airplanes. The original NPRM would have superseded an existing AD that currently requires repetitive detailed inspections of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and corrective actions if necessary. The original NPRM proposed to add airplanes to the applicability in the existing AD and change the inspection type. The original NPRM resulted from a determination that certain airplanes must be included in the applicability of the AD, and that the inspection type must be revised. This new action revises the original NPRM by including airplanes that were inadvertently excluded from the applicability. We are proposing this supplemental NPRM to detect and correct wear of the inboard flap trunnions, which could lead to loss of flap surface control and consequently result in the flap detaching from the airplane. A detached flap could result in damage to the tail of the airplane.

DATES: We must receive comments on this supplemental NPRM by April 2, 2007.

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

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

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

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

• Fax: (202) 493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–25658; Directorate Identifier 2006–NM–054–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to include an AD that supersedes AD 2006–04–06, amendment 39–14487 (71 FR 8439, February 17, 2006). The original NPRM applies to certain Airbus Model A318, A319, A320, and A321–100 airplanes. The original NPRM was published in the **Federal Register** on August 22, 2006 (71 FR 48838). The original NPRM proposed to continue to require repetitive detailed inspections of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and corrective actions if necessary. The original NPRM also proposed to add airplanes to the applicability in the existing AD and change the inspection type.

Actions Since Original NPRM Was Issued

We have determined that the original NPRM should have applied to certain Airbus Model A318 airplanes, and all Airbus Model A319, A320, and A321–111, –112, and –131 airplanes. In the original NPRM, we stated that we were adding Model A321–211 and –231 airplanes; however, the applicability was inadvertently changed to Model A318, A319, A320, and A321 airplanes on which Airbus Modification 26495 has been incorporated in production. The change resulted in the airplanes identified in paragraph (f) of the original NPRM (Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes; except those on which Airbus Modification 26495 has been accomplished in production) being excluded from the applicability of the original NPRM. We have changed the applicability in this supplemental NPRM to certain Airbus Model A318 airplanes, and ''all'' Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, and –231 airplanes.

Relevant Service Information

Airbus has issued Service Bulletins A320–27–1117, Revision 03, dated August 24, 2001; and Revision 04, dated November 6, 2001. (Airbus Service Bulletin A320–27–1117, Revision 02, dated January 18, 2000, was referenced in the original NPRM as the appropriate source of service information for accomplishing the modification.) Airbus has also issued Airbus Service Bulletin A320–57–1133, Revision 01, dated August 7, 2006. (Airbus Service Bulletin A320–57–1133, dated July 28, 2005, was referenced in the original NPRM as the appropriate source of service information for accomplishing the inspections.) The changes in these revisions are minor and no additional work is necessary for airplanes modified by the previous issues. We have changed the AD to refer to this revised service information as the appropriate source of service information for accomplishing the required actions. In addition, we have added new paragraphs (k) and (l) to this AD to provide credit for accomplishing the actions before the effective date of this AD in accordance with the service information referenced in the original NPRM. Subsequent paragraphs have been re-identified accordingly. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Comments

We have considered the following comments on the original NPRM.

Support for the NPRM

Airbus supports the original NPRM.

Request To Incorporate/Publish Certain Information

The Modification and Replacement Parts Association (MARPA) states that, frequently, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which

means they cannot rely upon private writings. MARPA notes that since the interpretation of a document is a question of law, and not fact, a service document not incorporated by reference will not be considered in a legal finding of the meaning of an airworthiness directive. MARPA is concerned that the failure to incorporate essential service information could result in a court decision invalidating the airworthiness directive.

MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the distribution to owners may, when the owner is a financing or leasing institution, not actually reach the persons responsible for accomplishing the airworthiness directive. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. We intend that the final rule in this action will incorporate by reference the documents necessary for the accomplishment of the proposed requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

Additionally, we do not publish service documents in DMS. We are currently reviewing our practice of publishing proprietary service information. Once we have thoroughly examined all aspects of this issue, and have made a final determination, we will consider whether our current practice needs to be revised. However, we consider that to delay this AD action for that reason would be inappropriate, since we have determined that an unsafe condition exists and that the requirements in this AD must be accomplished to ensure continued safety. Therefore, we have not changed the supplemental NPRM in this regard.

Clarification of Compliance Times and Applicability of Paragraphs (g) and (j)(2) of This Supplemental NPRM

We have changed paragraphs (g) and (j)(2) of this supplemental NPRM (paragraph (i)(2) of the original NPRM) to specify the ''applicable'' compliance times in the subparagraphs. Paragraphs (g)(2) and (j)(2)(ii) of this supplemental NPRM are applicable only to airplanes that have not had Airbus Modification 26495 done in production.

Revised Applicability in Paragraph (g) of This Supplemental NPRM

We have changed the applicability in paragraph (g) of this supplemental NPRM for clarity and we have added Model A320–111 airplanes, which were inadvertently excluded from that paragraph in the original NPRM. Paragraph (g) is applicable to all airplanes identified in the existing AD, and Model A320–111 airplanes are included in that applicability.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification in AD 2006–04–06.	14	$80	The manufacturer states that it will supply required parts to operators at no cost.	$1,120	755	$845,600.
Detailed inspection in AD 2006–04–06.	2	80	None	$160, per inspection cycle.	755	$120,800, per inspection cycle.
General visual inspection (new action).	1	80	None	$80, per inspection cycle.	741	$59,280, per inspection cycle.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14487 (71 FR 8439, February 17, 2006) and adding the following new airworthiness directive (AD):

Airbus: Docket No.: FAA–2006–25658; Directorate Identifier 2006–NM–054–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 2, 2007.

Affected ADs

(b) This AD supersedes AD 2006–04–06.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Model A318–111 and –112 airplanes on which Airbus Modification 26495 has been incorporated in production.

(2) All Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, and –231 airplanes.

Unsafe Condition

(d) This AD results from a determination that certain airplanes must be included in the applicability of the AD, and that the inspection type must be revised. We are issuing this AD to detect and correct wear of the inboard flap trunnions, which could lead to loss of flap surface control and consequently result in the flap detaching from the airplane. A detached flap could result in damage to the tail of the airplane.

Compliance

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

Restatement of Requirements of AD 2006–04–06

Modification

(f) For Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes; except those on which Airbus Modification 26495 has been accomplished in production: Within 18 months after January 8, 2001 (the effective date of AD 2000–24–02, amendment 39–12009), modify the sliding panel driving mechanism of the flap drive trunnions, in accordance with Airbus Service Bulletin A320–27–1117, Revision 02, dated January 18, 2000; or Revision 04, dated November 6, 2001. As of the effective date of this AD, only Revision 04 may be used.

Note 1: Accomplishment of the modification required by paragraph (f) of this AD before January 8, 2001, in accordance with Airbus Service Bulletin A320–27–1117, dated July 31, 1997; or Revision 01, dated June 25, 1999; is acceptable for compliance with that paragraph.

Detailed Inspections

(g) For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes: At the latest of the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, do a detailed inspection of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and do any corrective actions, as applicable, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–57–1133, dated July 28, 2005; or Revision 01, dated August 7, 2006; except as provided by paragraph (p) of this AD. As of the effective date of this AD, only Revision 01 may be used. Any corrective actions must be done at the compliance times specified in Figures 5 and 6, as applicable, of the service bulletin; except as provided by paragraphs (m), (n), and (o) of this AD. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours until the inspection required by paragraph (j) of this AD is done.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(1) Before accumulating 4,000 total flight hours on the inboard flap trunnion since new.

(2) Within 4,000 flight hours after accomplishing paragraph (f) of this AD.

(3) Within 600 flight hours after March 24, 2006 (the effective date of AD 2006–04–06).

New Requirements of This AD

Modification

(h) For Model A321–211 and –231 airplanes, except those on which Airbus Modification 26495 has been accomplished in production: Within 18 months after the effective date of this AD, modify the sliding panel driving mechanism of the flap drive trunnions, in accordance with Airbus Service Bulletin A320–27–1117, Revision 04, dated November 6, 2001.

(i) Accomplishing the modification specified in paragraph (h) of this AD is acceptable for compliance with the requirements of that paragraph if done before the effective date of this AD in accordance with the applicable service bulletin identified in Table 1 of this AD.

TABLE 1.—AIRBUS SERVICE BULLETINS

Service Bulletin	Revision level	Date
A320–27–1117	Original	July 31, 1997.
A320–27–1117	Revision 01	June 25, 1999.
A320–27–1117	Revision 02	January 18, 2000.

TABLE 1.—AIRBUS SERVICE BULLETINS—Continued

Service Bulletin	Revision level	Date
A320–27–1117	Revision 03	August 24, 2001.

General Visual Inspections

(j) For all airplanes: At the time specified in paragraph (j)(1) or (j)(2) of this AD, as applicable, do a general visual inspection of the inboard flap trunnions for any wear marks and of the sliding panels for any cracking at the long edges, and do all applicable corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–57–1133, Revision 01, dated August 7, 2006; except as provided by paragraph (p) of this AD. All corrective actions must be done at the compliance times specified in Figures 5 and 6, as applicable, of the service bulletin; except as provided by paragraphs (m), (n), and (o) of this AD. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours. Accomplishment of the general visual inspection required by this paragraph terminates the detailed inspection requirement of paragraph (g) of this AD.

Note 3: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) For airplanes on which the detailed inspection required by paragraph (g) of this AD has been done before the effective date of this AD: Inspect before accumulating 4,000 total flight hours on the inboard flap trunnion since new, or within 4,000 flight hours after accomplishing the most recent inspection required by paragraph (g) of this AD, whichever occurs later.

(2) For airplanes other than those identified in paragraph (j)(1) of this AD: Inspect at the latest of the applicable times specified in paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii) of this AD.

(i) Before accumulating 4,000 total flight hours on the inboard flap trunnion since new.

(ii) Within 4,000 flight hours after accomplishing paragraph (f) or (h) of this AD.

(iii) Within 600 flight hours after the effective date of this AD.

Actions Accomplished According to Previous Issue of Service Bulletins

(k) Accomplishment of the modification required by paragraph (f) of this AD before the effective date of this AD, in accordance with Airbus Service Bulletin A320–27–1117, Revision 03, dated August 24, 2001, is acceptable for compliance with the requirements of that paragraph.

(l) Accomplishment of the inspections required by paragraph (j) of this AD before the effective date of this AD, in accordance with Airbus Service Bulletin A320–57–1133, dated July 28, 2005, is acceptable for compliance with the requirements of that paragraph.

Compliance Times

(m) Where Airbus Service Bulletins A320–57–1133, dated July 28, 2005; and Revision 01, dated August 7, 2006; specify replacing the sliding panel at the next opportunity if damaged, replace it within 600 flight hours after the inspection required by paragraph (g) or (j) of this AD, as applicable.

(n) If any damage to the trunnion is found during any inspection required by paragraph (g) or (j) of this AD, before further flight, do the corrective actions specified in Airbus Service Bulletin A320–57–1133, dated July 28, 2005; or Revision 01, dated August 7, 2006. As of the effective date of this AD, only Revision 01 may be used.

Grace Period Assessment

(o) Where Airbus Service Bulletins A320–57–1133, dated July 28, 2005; and Revision 01, dated August 7, 2006; specify contacting the manufacturer for a grace period assessment after replacing the trunnion or flap, contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the Direction Ge´ne´rale de l'Aviation Civile; or the European Aviation Safety Agency (or its delegated agent); for the grace period assessment.

No Reporting Requirement

(p) Although Airbus Service Bulletins A320–57–1133, dated July 28, 2005; and Revision 01, dated August 7, 2006; specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(q)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(r) French airworthiness directive F–2005–139, dated August 3, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on February 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3841 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD12

Oil and Gas and Sulphur Operations on the Outer Continental Shelf (OCS)—Oil and Gas Production Requirements

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS proposes to amend the regulations regarding oil and natural gas production. This is a complete rewrite of these regulations, addressing issues such as production rates, burning oil, and venting and flaring natural gas. The proposed rule would eliminate most restrictions on production rates and clarify flaring and venting limits. The proposed rule was written using plain language, so it will be easier to read and understand.

DATES: Submit comments by June 4, 2007. MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this rule by April 5, 2007.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD12 as an identifier in your message. See also Public Comment Procedures under Procedural Matters.

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the Web site for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use RIN 1010–AD12 in the subject line.

• Fax: 703–787–1546. Identify with the RIN, 1010–AD12.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Oil and Gas Production Requirements, 1010–AD12'' in your comments and include your name and return address.

• Send comments on the information collection in this rule to: Interior Desk Officer 1010–AD12, Office of Management and Budget; 202/395–6566 (facsimile); e-mail: *oira_docket@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Amy C. White, Regulations and Standards Branch, 703–787–1665.

SUPPLEMENTARY INFORMATION: This rule proposes to revise subpart K, Oil and Gas Production Rates, of 30 CFR 250. The new version of subpart K would represent a major change in the structure and readability of the regulation with some changes in the requirements. This revision would eliminate some requirements that are no longer necessary in today's industry and clarify other requirements. Some of these revisions are based on a Government Accountability Office (GAO) report on natural gas flaring and venting.

GAO Report

In July 2004, the GAO issued a report on world-wide emissions from vented and flared natural gas titled, ''Natural Gas Flaring and Venting—Opportunities to Improve Data and Reduce Emissions'' (GAO–04–809). This report is available on the GAO Web site at: *http://www.gao.gov/new.items/d04809.pdf.* This report reviewed the flaring and venting data available, the extent of flaring and venting, their contributions to greenhouse gas emissions, and opportunities for the federal government to reduce flaring and venting. The report found that:

• The amount of gas emitted through flaring and venting worldwide is small compared with global natural gas production and represents a small portion of greenhouse gas emissions.

• Worldwide flaring and venting is estimated to contribute, respectively, about 4 percent of the total methane and about 1 percent of the total carbon dioxide emissions caused by human activity.

• EIA [Energy Information Administration] estimates that the United States flares or vents about 0.4 percent of its production, representing only 3 percent of the world's total amount of natural gas flared and vented.

• In the United States, there are well-developed natural gas markets and infrastructure to reduce the flaring and venting of associated natural gas.

• Since 1990, the quantity of oil produced has increased, but because of various global reduction initiatives, the quantity of natural gas flared and vented has remained constant. Consequently, natural gas emissions as a percentage of oil production have decreased.

• Since the impact of methane (venting) on the earth's atmosphere is about 23 times greater than that of carbon dioxide (flaring), a small change in the ratio of flaring to venting could cause a disproportionate change in the impact of emissions.

The report concluded that more accurate records on flaring and venting are needed to determine the amount of the resource that is lost and the volume of greenhouse gas emissions these practices contribute to the atmosphere each year. The GAO made two recommendations to the Secretary of the Interior: (1) ''Consider the cost and benefit of requiring that companies flare the natural gas, whenever possible, when flaring or venting is necessary,'' and (2) ''consider the cost and benefit of requiring that companies use flaring and venting meters to improve oversight.'' In addition, there was a recommendation to the Secretary of Energy to consider, ''in consultation with EPA [Environmental Protection Agency], MMS, and BLM [Bureau of Land Management], how to best collect separate statistics on flaring and venting.''

In comments on the draft report, the Department of the Interior (DOI) concurred with the report's recommendations and agreed to assess the cost effectiveness of requiring the oil and gas industry to implement these changes. MMS conducted analyses to assess the costs and benefits of requiring flare/vent meters and also of requiring flaring instead of venting. The first analysis supported the recommendation to require meters provided that the facilities process more than 2,000 barrels of oil per day (BOPD). This requirement is included in the proposed rule.

The second analysis indicated that a regulatory change to require flaring instead of venting may be appropriate. However, the cost of implementing this requirement is significant, and input from potentially affected parties is necessary to establish a reasonable threshold. MMS plans to work directly with interested parties to determine the best approach in considering the GAO recommendation to require flaring instead of venting natural gas. We are soliciting comments on this issue in this proposed rule. We would like comments related to additional costs, environmental impacts, and conditions or situations where flaring may not be advisable. We are planning a workshop to discuss the issue. The workshop would be followed by appropriate rulemaking.

To improve data collection, as the GAO report suggested, MMS is proposing that operators report flaring and venting volumes to MMS separately. Currently, MMS only collects information on the total natural gas flared and vented. Operators do not need to differentiate between the two categories. In addition, MMS inspectors currently use infrared cameras to verify natural gas venting.

Proposed Rule

Organization

The proposed rule would completely restructure subpart K. The new version is divided into shorter, easier-to-read sections. Each section focuses on one topic instead of the arrangement in the current version, which covers multiple topics in each section. For example, in the current edition of subpart K, the regulations regarding burning liquid hydrocarbons, as well as those governing flaring or venting natural gas, are in one section. In the proposed rule, these same requirements are in five sections, making it easier for an operator to find the information that applies to its particular situation. The numbering for subpart K would start at § 250.1150 instead of § 250.1100 to accommodate other planned rulemaking. The proposed structure is shown in the following table:

Current rule	Proposed rule
§ 250.1100 Definitions for production rates	§ 250.105 Definitions.
§ 250.105 Definitions.	
§ 250.1101 General requirements and classification of reservoirs	§ 250.1150 General reservoir production requirements.
	§ 250.1154 How do I determine if my reservoir is sensitive?
	§ 250.1155 What information must I submit for sensitive reservoirs?

Current rule	Proposed rule
	§ 250.1156 What steps must I take to receive approval to produce within 500 feet of a unit or lease line?
	§ 250.1157 How do I receive approval to produce gas from an oil reservoir with an associated gas cap?
§ 250.1102 Oil and gas production rates	Requirements for production rates are largely eliminated. Portions retained were combined with new information in ''§ 250.1159 May the Regional Supervisor limit my well or reservoir production rates?''
§ 250.1103 Well production testing	§ 250.1151 How often must I conduct well production tests?
	§ 250.1152 How do I conduct well tests?
§ 250.1104 Bottomhole pressure survey	§ 250.1153 When must I conduct a static bottomhole pressure survey?
§ 250.1105 Flaring or venting of gas and burning liquid hydrocarbons	§ 250.1160 When may I flare or vent gas?
	§ 250.1161 When may I flare or vent gas for extended periods of time?
	§ 250.1162 When may I burn produced liquid hydrocarbons?
	§ 250.1163 How must I measure gas flaring or venting and liquid hydrocarbon burning volumes and what records must I maintain?
	§ 250.1164 What are the requirements for flaring or venting gas containing H_2S?
§ 250.1106 Downhole commingling	§ 250.1158 How do I receive approval to downhole commingle hydrocarbons?
§ 250.1107 Enhanced oil and gas recovery operations	§ 250.1165 What must I do for enhanced recovery operations?
New	§ 250.1159 May the Regional Supervisor limit my well or reservoir production rates?
	§ 250.1166 What additional reporting is required for developments in the Alaska Region?
	§ 250.1167 What information must I submit for approvals?

The organization of the proposed rule reflects the actual sequence of events that occurs as wells are developed and the resources produced. The proposed rule is written in plain language to conform to the DOI's standards for rule writing. These changes include incorporating tables, using a question format for section headings, and using pronouns. These changes would make the rule easier to understand. Finally, a table at the end of the rule lists the information that operators would have to submit to MMS to receive approvals for various operations.

Major Changes to the Rule

Some requirements from the previous edition of subpart K would be eliminated by the proposed rule because they are unnecessary in today's petroleum industry. For example, MMS required operators to establish maximum production rates (MPR's) for producing well completions, and maximum efficient rates (MER's) for producing reservoirs, in OCS Order No. 11 in 1974, during a period of oil shortages and energy crises. In 1988, MMS reduced the MER requirement. Currently, MER's are required only on sensitive reservoirs (primarily oil reservoirs with associated gas caps). Determining and maintaining production rates imposes a significant burden on operators. Based on the past 30 years of experience, MMS has concluded that maximum rate requirements and production balancing requirements can be largely eliminated without significant detriment to efforts for conservation and maximization of ultimate recovery. However, the proposed rule would allow the Regional Supervisor to set production rates in cases where excessive production could harm ultimate recovery from the reservoir.

The proposed rule would clarify required information submittals to MMS, including requirements relating to the documents submitted to MMS and the timing of those submissions. For example, there is additional guidance on notifying adjoining operators regarding production within 500 feet of a common lease or unit line. The proposed rule would provide more detail as to when the notification must occur, what the notice must include, and how to verify the notification with MMS.

The proposed rule would incorporate several Notices to Lessees and Operators (NTLs) that clarify the current regulations. These NTLs would be obsolete if the proposed rule becomes final and MMS would withdraw all of these NTLs at that time. However, if necessary, MMS would issue additional NTLs to provide guidance. The NTLs affected include:

- NTL No. 97–16, ''Production Within 500 Feet of a Unit or Lease Line,'' effective August 1, 1997. This NTL clarifies MMS policy on issuing approvals for production within 500 feet of a unit or lease line, and includes details on what the requesting operator needs to provide to MMS for approval. Those details are addressed in the proposed rule.
- NTL No. 98–23, ''Interim Reporting Requirements for 30 CFR 250, subpart K, Oil and Gas Production Rates,'' effective October 15, 1998. This NTL addressed oral approvals for gas flaring and relaxed some of the requirements regarding production rates, including MER and MPR in certain circumstances. The NTL clarified the submittal of written summary letters on flaring incidents that received oral approval. These requirements are addressed in the proposed rule.
- NTL No. 99–G20, ''Downhole Commingling Applications,'' effective September 7, 1999. This NTL was issued in conjunction with NTL No. 99–G19. It clarifies what information the applicant needs to include in downhole commingling applications to ensure that the application is processed without delay. These information requirements were added to the proposed rule.
- NTL No. 2006–N06, ''Flaring and Venting Approvals,'' effective December 19, 2006. This NTL clarifies the definitions of flaring and venting, the record-keeping requirements, the classification of emitted natural gas, and the MMS policy regarding continuous flaring or venting of small volumes of oil-well gas or gas-well gas from storage vessels or other low-pressure production vessels when the gas cannot be economically recovered. These issues are addressed in the proposed rule. This NTL also provides contact information for each Region and provides sample

field records. These two items are not addressed in the proposed rule. MMS would issue a new NTL to include only this information, after we publish the final rule.

The most significant change, with regard to cost, would be a proposed requirement for natural gas flare/vent meters on facilities that process significant volumes of oil. The current MMS requirements rely heavily on the accuracy of operator calculations and record keeping. Recent incidents have shown that these methods are insufficient to accurately capture actual flaring and venting volumes. The proposed rule would require the installation of meters to accurately measure all flared and vented natural gas on facilities that process more than 2,000 BOPD. These facilities have the potential to flare or vent significant volumes of associated gas.

MMS estimates the cost of purchasing and installing these meters to be $77,000 per facility. Limiting the requirement to facilities that process over 2,000 BOPD ensures that the meters are a small expense relative to the cost of operating those facilities and relative to the income generated by those facilities; and that the requirement would not be an unfair burden to small operators. MMS estimates that 34 operators would have to install the meters on 112 facilities. Of those operators that would have to install the meters, nine are considered small businesses, according to the North American Industry Classification System (NAICS).

The July 2004 GAO report on world-wide emissions from vented and flared natural gas, discussed above, recommended that more accurate records on flaring and venting are needed to determine the amount of the resource that is wasted, and the volume of greenhouse gas these practices contribute to the atmosphere each year. The report recommended that DOI consider requiring flare/vent meters to measure the gas lost. MMS agrees with that recommendation. However, MMS believes installing these meters on facilities that process less than 2,000 BOPD would not be cost effective, and might be an undue burden on smaller operators.

MMS is also proposing to add new definitions for ''flaring'' and ''venting'' to 30 CFR part 250 subpart A, and to revise the definition for ''sensitive reservoir.''

The following is a brief section-by-section description of the substantive proposed changes to subpart K:

§ 250.105 Definitions. In the current rule, definitions appear in subpart A at 30 CFR 250.105 and in subpart K at 30 CFR 250.1100. MMS proposes removing the definitions from subpart K because they already appear in subpart A.

General

§ 250.1150 What are General Reservoir Production Requirements? Because the first section of subpart K would no longer contain the definitions, this section would contain the general requirements for producing wells and reservoirs.

Well Tests and Surveys

§ 250.1151 How often must I conduct well production tests? Well production testing is required for all wells. This proposed section defines when an operator must perform the tests and describes the conditions for the tests. This section would cover well flow potential tests, semi-annual well tests, and any special tests that the Regional Supervisor may require. Operators would no longer be required to submit Semiannual Well Test Reports within 45 days of the tests. Instead, they would submit the reports within 45 days after the end of the calendar half-year. This would allow operators to submit all their well tests at one time and include the most recent tests for those few completions that produced during the 6-month period, but were not tested within the last 45 days.

§ 250.1152 How do I conduct well tests? This proposed section describes how operators must conduct a well test. The testing procedures would be the same as in the current version of the rule. However, the section would be reformatted to make the procedures easier to follow. This reformatting would include the procedure for ensuring that the well is stabilized before conducting the test; the required duration of the test; the usage of correction factors and adjustments; and an option to use other procedures with approval from the Regional Supervisor. It also discusses conducting additional tests that the Regional Supervisor may require.

§ 250.1153 When must I conduct a static bottomhole pressure survey? Static bottomhole pressure surveys are required on all new producing reservoirs, and annually on reservoirs with three or more producing completions. This proposed section addresses when operators must conduct static bottomhole pressure surveys and what information operators must submit to MMS. The proposed new provision would allow the operator to request a departure from this requirement from the Regional Supervisor, with appropriate justification.

Classifying Reservoirs

§ 250.1154 How do I determine if my reservoir is sensitive? MMS requires that operators classify all reservoirs as either sensitive or non-sensitive. A sensitive reservoir is a reservoir in which high reservoir production rates would decrease ultimate recovery. This section would define the requirements for classifying reservoirs; when the Regional Supervisor may reclassify a reservoir; and when an operator may or must request reclassification of a reservoir. There are not substantive changes between the requirements of the current version of the rule and the proposed; this section would be reorganized and easier to read.

§ 250.1155 What information must I submit for sensitive reservoirs? This proposed section defines what information MMS requires for sensitive reservoirs and when operators must submit that information. The only proposed change is that the Regional Supervisor may request that the operator submit Form MMS–127 (Sensitive Reservoir Information Report) and supporting information.

Approvals Prior to Production

§ 250.1156 What steps must I take to receive approval to produce within 500 feet of a unit or lease line? In the current version of subpart K, a number of requirements, including approval for producing within 500 feet of a unit or lease line and basic classification requirements, are included in one section, 30 CFR 250.1101. In the proposed rule, each of these issues is addressed in a separate section. Title 30 CFR 250.1156 would address only the approval and service fee for producing within 500 feet of a lease or unit line.

The proposed approval requirements are clearer than in the current rule, and include issues addressed in NTL 97–16. In addition to receiving approval from the Regional Supervisor, operators must notify operators of adjacent leases. The requirement to notify adjacent operators would be clearer, and there is a list of information the notification would have to include.

§ 250.1157 How do I receive approval to produce gas from an oil reservoir with an associated gas cap? This section would address how to receive approval to produce from an associated gas cap and its service fee. The required supporting information is listed in the table at proposed 30 CFR 250.1167 at the end of the rule.

§ 250.1158 How do I receive approval to downhole commingle hydrocarbons? This section would address how to obtain MMS approval to

downhole commingle hydrocarbons and the service fee that must accompany your request. For downhole commingling in a competitive reservoir, the operator would be required to notify the operators of all leases that contain the reservoir. The request for approval must document this notification. Operators of the other leases would have 30 days after the notification to provide the Regional Supervisor with letters of acceptance or objection. If the notified operators do not respond within the specified period, the Regional Supervisor will assume the operators do not object. The Regional Supervisor will consider any objections, but may approve the commingling request to protect correlative rights. This section would also incorporate issues addressed in NTL's No. 99–G19 and 99–G20.

Production Rates

§ 250.1159 May the Regional Supervisor limit my well or reservoir production rates? Generally, this proposed rule would eliminate MPR's and MER's. However, this section would retain the Regional Supervisor's authority to set an MPR for a producing well completion or an MER for a sensitive reservoir. If the Regional Supervisor sets an MPR or MER, it would be subject to the terms and conditions set by the Regional Supervisor. Those terms and conditions would include production restrictions that allow for normal variations and fluctuations in production rates.

Flaring, Venting, and Burning Hydrocarbons

§ 250.1160 When may I flare or vent gas? The current regulation contains all of the flaring, venting, and burning regulations in one section. The proposed rule covers these in separate sections, so it is easier to find the requirements for a given situation. The new format also allows for the inclusion of more detail and clarification of flaring and venting situations that are not described in the current rule. Since there are many situations under which flaring and venting might occur, the table in this section reflects general categories that encompass the situations under which MMS would allow flaring or venting without approval from the Regional Supervisor. Under most circumstances, the proposed rule would allow operators to treat gas flashing from gas-well condensate similar to oil-well gas for flaring and venting approval purposes.

The proposed rule would require operators to receive approval before flaring or venting gas in volumes higher than those specified in their previously-approved plans. This would enable MMS to ensure that flaring and venting activities are in compliance with environmental laws.

The proposed rule would also allow the Regional Supervisor to specify flaring and venting volume limits (in addition to time limits) in order to prevent air quality degradation or the loss of reserves. This is sometimes necessary because offshore production facilities are now capable of flaring or venting extremely large volumes in a short amount of time.

§ 250.1161 When may I flare or vent gas for extended periods of time? This section would define when operators must receive approval from the Regional Supervisor to flare or vent gas for an extended period of time. If there is a need to flare or vent a small amount of gas (less than 10 MCF per day) due to improperly working valves or pipe fittings and the Regional Supervisor determines that it is prudent to postpone the repair until a scheduled facility shutdown occurs, then the proposed rule would allow the Regional Supervisor to exempt the amount flared or vented from the time limits set in § 250.1160.

§ 250.1162 When may I burn produced liquid hydrocarbons? The regulations on burning produced liquid hydrocarbon would not change. Operators must receive approval from the Regional Supervisor in all cases before burning liquid hydrocarbons.

§ 250.1163 How must I measure gas flaring or venting volumes, and liquid hydrocarbon burning volumes; and what records must I maintain? Requirements for measuring and keeping records on flaring, venting, and burning would change. The proposed rule would require vent/flare meters on all facilities that process more than 2,000 BOPD. Operators would be required to install these meters within 120 days after the final rule is published. This extended time frame is to accommodate operators that are required to install meters at multiple facilities. Facilities that do not process more than 2,000 BOPD when the final rule is published, but increase production above this level after the rule is published, would be required to install meters within 90 days.

Operators would be required to keep records on flaring, venting, and burning for 6 years to comply with 30 CFR Part 212—Records and Files Maintenance. The operators would be required to store these records on the facility for the first 2 years after the flaring, venting, or burning event. After that, the operator would be able to keep the records at a separate location, but they must be available for MMS review.

The proposed rule would clarify reporting procedures and require operators to report flared and vented volumes separately. The previously discussed GAO report concluded that MMS should collect flared and vented volumes separately. MMS tentatively agrees with this conclusion, and does not believe it will pose a significant burden on operators because they already report the volumes of gas flared and vented to MMS on Form MMS–4054 (Oil and Gas Operations Report). Operators would only need to identify whether the gas volumes were flared or vented.

The proposed rule would require operators to identify the facilities where the gas is flared or vented. This would enable MMS to directly compare volumes reported on Forms MMS–4054 with field records. This requirement would also reduce the burden on operators during royalty audits because operators would no longer have to reconstruct historical flare/vent allocations for MMS auditors.

The proposed rule would require operators to retain meter recordings on facilities that require flare/vent meters. This would allow MMS to compare eyewitness observations with field records and ensure that flaring and venting incidents are properly recorded. MMS does not believe this would be a significant burden on those facilities with flare/vent meters because these meters typically record such events automatically and operators usually maintain these electronic records for their own purposes.

In addition, the proposed rule would clarify when royalties are due on flared gas, vented gas, and burned liquid hydrocarbons under 30 CFR 202.100 Royalty on Oil and 30 CFR 202.150 Royalty on Gas. As in the current rule, royalties would not be due if the hydrocarbons were unavoidably lost. In most cases, MMS will consider hydrocarbons that are flared, vented or burned with MMS approval as ''unavoidably lost'' and the operator would not be required to pay royalties. However, MMS would retain the authority to determine whether or not the loss was avoidable or due to negligence, even if approved by MMS. For example, if you received MMS approval to flare 100 MCF of gas per day, then actually flared 100,000 MCF of gas per day under conditions that would not have been approved, MMS might determine that the entire volume flared was ''avoidably lost'' and royalties would be due on the entire volume. MMS would also be able to

pursue civil penalties, under 30 CFR 250 subpart N—Outer Continental Shelf (OCS) Civil Penalties, if we determine that the loss was avoidable or due to negligence.

§ 250.1164 What are the requirements for flaring or venting gas containing H_2S? The proposed rule would require Regional Supervisor approval before emitting more than 15 lbs of SO_2 per hour per mile from shore. This would ensure that flaring activities are in compliance with environmental laws. MMS does not believe this would create an excessive burden on operators. The proposed regulations specify the records that the operator would have to keep. These records must be kept for 6 years, meeting the same requirements as in the previous section.

Enhanced Recovery

§ 250.1165 What must I do for enhanced recovery operations? There are no significant proposed changes to the regulations regarding enhanced recovery operations. Operators would still be required to initiate enhanced recovery operations; receive Regional Supervisor approval for the plans; and submit reports on the substances injected, produced, or reproduced.

Special Alaska OCS Region Requirements

§ 250.1166 What additional reporting is required for developments in the Alaska Region? This new section addresses special proposed reporting requirements for Alaska. This would require operators to submit an annual reservoir management report to the Regional Supervisor for any development in Alaska. If a development is regulated by both the MMS and the State of Alaska, the operator would be able to coordinate reporting requirements with MMS and the State of Alaska Oil and Gas Conservation Commission. This section would also require operators to request an MER for sensitive reservoirs in Alaska.

This is necessary for the MMS Alaska Region to administer Section 7 Agreements between the Secretary of the Interior and the Governor of the State of Alaska. Under existing Section 7 Agreements, oil and gas reserves underlying a common geologic structure must be unitized and the allocation of production between Federal and State leases for royalty payment must be based on recoverable oil and gas. Under agreement with the State, this determination will be based on reservoir performance following completion of the development drilling program and sustained production. Annual reservoir management plans enable the MMS to monitor recoverable oil and assure proper allocation of reserves for royalty payment and to be consistent with the State of Alaska requirements.

This provision would also enable the MMS to manage its responsibility for conservation of resources on a real time basis. The number, type, spacing and sequencing of development wells (producers and injectors) will vary from the original approved development and production plan as more information on the reservoir is obtained. An annual reservoir management plan would enable the MMS to track development activities with the approved development and production plan and assure maximum recovery based on the most current knowledge of the reservoir.

Information Needed With Forms and for Approvals

§ 250.1167 What information must I submit with forms and for approvals? This proposed table is designed to be an easy-to-use reference to determine the information and supporting documentation to submit to the Regional Supervisor and to remind lessees to pay the appropriate service fee. Forms MMS–126 (Well Potential Test Report) and MMS–127 (Sensitive Reservoir Information Report) would require supporting documents. Also, several operations covered under subpart K (gas cap production, downhole commingling, reservoir reclassification, and production within 500 feet of a unit or lease line), would require that the operator submit applications and supporting documents to the Regional Supervisor. All of these documents are covered in the table.

Questions

In addition to comments on these proposed regulations, MMS is requesting comments on the following questions.

1. Are these regulations well organized and easy to read?
2. Is the submittal table useful?
3. Is the 2,000 BOPD requirement for installing flare/vent meters reasonable? Are the cost estimates accurate?
4. Would the requirement to install flare/vent meters pose a safety hazard by restricting flow during emergency facility blowdowns, or are accurate meters (such as ultrasonic meters) available that do not impede gas flow?
5. Should MMS require operators to flare natural gas instead of venting it, under approved flaring and venting conditions? This question is based on a recommendation from the GAO report on flaring and venting natural gas, and reflects concerns about the amount of greenhouse gas that is released into the environment by venting. MMS is studying this recommendation before proposing any regulatory change. We would like comments on this issue, including comments related to additional costs, environmental impacts, and conditions or situations where flaring may not be advisable.

Procedural Matters

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) The proposed rule would not have an annual economic effect of $100 million or more on the economy. It would 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. A cost-benefit and economic analysis is not required.

This proposed rule revises the requirements for oil and gas production. The changes in the rule are not significant enough to have an impact on the economy or an economic sector, productivity, jobs, the environment, or other units of government. Some of the current requirements would be relaxed. For example, limits on production rates were eliminated in most cases. This would allow the operators to produce the oil and gas at the rates that they determine are best, and would not have a significant effect on any sector of the economy.

(2) The proposed rule would not create a serious inconsistency or otherwise interfere with action taken or planned by another agency because MMS is the only Federal government agency directly involved in setting production requirements for the offshore oil and natural gas industry.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights and obligations of their recipients.

(4) This proposed rule would not raise novel legal or policy issues. There are some changes in production requirements in this proposal, but most of the changes clarify existing MMS requirements. Some may require additional paperwork for the operators. Since the basic production requirements are not changed, and restrictions on production rates are decreased, this proposed rule should not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the RFA (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

This rule applies to all lessees operating on the OCS. Lessees fall under the Small Business Administration's North American Industry Classification System (NAICS) code 211111, Crude Petroleum and Natural Gas Extraction. Under this NAICS code, companies with less than 500 employees are considered small businesses. MMS estimates that 130 lessees explore for and produce oil and gas on the OCS; approximately 70 percent of them (91 companies) fall into the small business category. The proposed regulation would therefore affect a substantial number of small entities. However, we have determined that it would not have a significant economic effect on these small entities.

One new requirement that would impose a cost to operators is a requirement to install flaring/venting meters on all facilities that process more than 2,000 BOPD. The GAO report on flaring and venting natural gas, released in July 2004, recommended that MMS require these meters to improve oversight. MMS agrees with this recommendation. MMS regulations allow flaring and venting in very limited circumstances. These meters would help MMS:

- Verify the amounts of natural gas that operators flare or vent into the environment;
- Prevent waste of resources;
- Collect the proper royalties on avoidably flared or vented gas;
- Determine if an operator is violating MMS regulations; and
- Assess the impacts on the environment.

In determining the criteria for which facilities must install the meters, MMS considered the cost of the meters and the amount of production needed to justify the cost. To ensure that the requirement to install flare/vent meters would not produce an undue burden on small companies, it was limited to those facilities that process more than an average of 2,000 BOPD.

MMS estimates that 34 companies would have to install meters on 112 facilities at an average cost of $77,000 per facility and a total cost to industry of $8,624,000 (112 × $77,000 = $8,624,000). Of those, nine companies are considered small businesses, based on the NAICS. These nine companies represent only 7 percent of the 130 operators on the OCS. We estimate that seven of these nine companies would need to install meters on one facility each; one company would need to install meters on two facilities; and one company would need to install meters on three facilities. This represents an average cost of $105,875 for each of the small companies (11 facilities × $77,000/9 companies). The average cost to non small companies would be $311,080 per company (101 facilities × $77,000/25 companies). In addition, this does not represent an unfair burden to small companies because the cost of these meters is small in comparison to the revenues generated by the amount of oil processed by those facilities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. This proposed rule revises the requirements for oil and gas production. The changes would not have an impact on the economy or an economic sector, productivity, jobs, the environment, or other units of government. Most of the new requirements are paperwork requirements, and would not add significant time to development and production processes. One new requirement would add new costs for some operators. Operators would be required to install flare/vent meters on any facility that processes more than an average of 2,000 BOPD. MMS estimates that 34 companies would have to install meters on 112 facilities at an average cost of $77,000 per facility and a total cost to industry of $8,624,000 (112 × $77,000 = $8,624,000).

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

In most cases, this proposed rule would eliminate the requirement for operators to set limits on production rates, allowing the operators to determine the best rate to produce their reservoirs. The limits on burning, flaring, and venting are clearer. These limits would encourage conservation of our natural resources, without putting undue production restrictions on operators. There would be a new requirement to install meters on facilities that process more than an average of 2,000 BOPD. As discussed above, this requirement would not significantly increase the cost of doing business offshore.

c. Would 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. This proposed rule would eliminate the requirement for operators to set limits on production rates, allowing the operators to determine the best rate to produce their reservoirs. There are clearer limits on burning, flaring, and venting, which would encourage conservation of our natural resources.

Unfunded Mandates Reform Act (UMRA) of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the proposal would not affect State, local, or tribal governments, and the effect on the private sector is small.

Takings Implication Assessment (Executive Order 12630)

The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment according to

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this proposed rule would not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role.

MMS has the authority to regulate offshore oil and gas production. State governments do not have authority over offshore production in Federal waters.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. MMS drafted this proposed rule in plain language to provide clear standards. We consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process for the same reasons.

Paperwork Reduction Act (PRA)

The proposed rule contains a collection of information that has been submitted to OMB for review and approval under § 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit your comments on the information collection aspects of this proposed rule directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with 1010–AD12. Send a copy of your comments to the Rules Processing Team (RPT), Attn: Rules Comments; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Oil and Gas Production Requirements—AD12'' in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations 30–60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by April 5, 2007. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for the rule is ''30 CFR 250, Subpart K, Oil and Gas Production Requirements.'' The proposed regulations concern oil and gas production requirements, and the information is used in our efforts to conserve natural resources, prevent waste, and protect correlative rights, including the government's royalty interest.

Respondents are the approximately 130 Federal oil and gas and sulphur lessees. Responses to this collection are mandatory. The frequency of response is on occasion, monthly, semi-annually, annually, and as a result of situations encountered depending upon the requirement. The information collection (IC) does not include questions of a sensitive nature. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and 30 CFR 250.196, ''Data and information to be made available to the public,'' and 30 CFR part 252, ''OCS Oil and Gas Information Program.'' Proprietary information concerning geological and geophysical data will be protected according to 43 U.S.C. 1352.

The collection of information required by the current subpart K regulations is approved under OMB Control Number 1010–0041. The proposed rule imposes minor changes to the information collection burden. The changes are:

- Report to Minerals Revenue Management (MRM) measured gas flaring or venting and liquid hydrocarbon burning. Submit periodic reports of volumes of oil, gas, or other substances injected, produced, or produced for a second time. Both requirements and burdens are now reported to MRM and their respective burdens are covered under OMB Control Number 1010–0139 (–154 burden hours);
- Request Regional Supervisor approval for emitting more than 15 lbs. of SO_2 (+10 burden hours);
- Submit to Regional Supervisor air quality modeling analysis report. The proposed burden hours represent an adjustment to a current requirement for information that was not previously collected (+40 burden hours);
- For Alaska Region Only: Submit to Regional Supervisor annual reservoir management report and supporting information. (At this time, the state requires the same information and MMS receives a copy). Alaska has started producing in state waters. If new development occurs in Federal waters, a minimal burden for submitting an annual reservoir management report, and burden hours for annual revisions are being added (+161 burden hours).
- Maintain meter records for detailing gas flaring or venting, and liquid hydrocarbon burning for 6 years. These new burden requirements do not add additional burden hours.
- General departure or alternative compliance requests (+5 burden hours).

The currently approved information collection for this subpart (1010–0041) will be superseded by this collection when final regulations take effect.

Currently, regulations covered under OMB Control Number 1010–0041 have 43,065 annual burden hours. MMS estimates the total annual reporting and recordkeeping ''hour'' burden for the proposed rule to be 43,127 hours; this is an increase of 62 burden hours. With the exception of the recordkeeping requirement changes and the items identified as ''new'' in the following chart, the burden estimates shown are those that are estimated for the current subpart K regulations.

30 CFR 250 Subpart K	Reporting & recordkeeping requirement	Fee/non-hour cost		
		Hour burden	Average number of annual responses	Annual burden hours
1151(a), (c); 1155; 1165; 1166(c); 1167.	Submit form MMS–126 and supporting information ..	3	1,325 forms	3,975
	Submit form MMS–127 and supporting information ..	2.2	2,189 forms	4,816

30 CFR 250 Subpart K	Reporting & recordkeeping requirement	Fee/non-hour cost		
		Hour burden	Average number of annual responses	Annual burden hours
	Submit form MMS–128 and supporting information ..	0.1—3	13,000 GOM forms ..... 600 POCS forms	1,336*
1151(b)	Request extension of time to submit results of semi-annual well test.	0.5	37 requests	19
1152(b), (c)	Obtain Regional Supervisor approval to conduct well testing using alternative procedures; conduct tests/retests to establish proper MPR or MER; conduct multipoint backpressure test for open flow potential.	0.5	37 requests	19
1152(d)	Provide advance notice of time and date of well tests.	0.5	10 notices	5
1153	Submit results of all static bottomhole pressure surveys obtained by lessee using form MMS–140. Request departure requirement w/justification to Regional Supervisor; submit with Form MMS–140 and supporting information.	14 1	1,270 surveys ..... 120 survey waivers	17,780 120
1154; 1167	Request reclassification of reservoir for Regional Supervisor approval and submit supporting information.	6	20 requests	120
1156; 1167	Request approval to produce within 500 feet of a unit or lease line and submit supporting information; notify operators; provide proof of date to Regional Supervisor.	5	50 requests	250
		3,300 × 50 requests = $165,000		
1157; 1167	Request approval to produce gas cap of a sensitive reservoir and submit supporting information; obtain approval to produce gas from an oil reservoir with an associated gas cap.	12	125 requests	1,500
		$4,200 × 125 requests = $525,000		
1158; 1167	Submit request to downhole commingle hydrocarbons and supporting information; notify operators; provide proof of date to Regional Supervisor.	6	119 applications	714
		$4,900 × 119 applications = $583,100		
1160; 1161	Request Regional Supervisor approval/inform to flare or vent oil-well gas or gas-well gas/exceed volume; submit documentation.	0.5	1,007 requests	504
1162; 1163(e)	Request approval to burn produced liquid hydrocarbons; submit documentation.	0.5	60 requests	30
NEW 1163	Initial purchase and install gas meters to measure the amount of gas flared or vented. This is a non-hour cost burden.	0	112	0
		112 meters @ $77,000 ea = $8,624,000		
NEW 1163(b); 1165(c)	Report to MRM measured gas flaring or venting and liquid hydrocarbon burning—burden covered under 1010–0139			0
NEW 1164(b)(1)	Request Regional Supervisor approval for emitting more than 15 lbs. of SO_2.	0.5	20 requests	10
1164(b)(2)	H_2S Contingency, Exploration, or Development and Production Plans—burden covered under 1010–0141 and 1010–0151			0
NEW 1164(b)(3)	Submit to Regional Supervisor air quality modeling analysis.	40	1 modeling analysis	40
1164(c)	Submit monthly reports of flared or vented gas containing H_2S.	2	3 operators × 12 mos. = 36.	72
1165	Submit proposed plan for enhanced recovery operations.	12	27 plans	324
1165(c)	Submit periodic reports of volumes of oil, gas, or other substances injected, produced, or produced for a second time—burden covered under OMB approval 1010–0139			0

30 CFR 250 Subpart K	Reporting & recordkeeping requirement	Fee/non-hour cost		
		Hour burden	Average number of annual responses	Annual burden hours
NEW 1166	Alaska Region only: submit to Regional Supervisor annual reservoir management report and supporting information.	1 100	1 (required by State, MMS gets copy). 1 new develop not State lands.	1 100
NEW 1150–1167	General departure or alternative compliance requests not specifically covered elsewhere in subpart K.	20 1	3 annual revisions 5	60 5
Reporting Subtotal			20,175	31,800
1163(c), (d)	Maintain records for 6 years detailing gas flaring or venting; maintain meter records and provide copies if requested.	13	869 platforms	11,297
1163(c)	Maintain records for 6 years detailing liquid hydrocarbon burning; maintain meter records and provide copies if requested.	0.5	60 occurrences	30
Recordkeeping Subtotal			929	11,327
Total Burden			21,104	43,127
				$9,897,100

* Reporting burden for this form is estimated to average 0.1 to 3 hours per form depending on the number of well tests reported, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. See breakdown for form MMS–128 above.

(a) MMS specifically solicits comments on the following questions:

(1) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

(b) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''non-hour cost'' burden resulting from the collection of information. Other than the cost recovery fees listed in the burden table, and the fee for installing flaring/venting meters (§ 250.1163), we have not identified any other costs, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) Total capital and startup cost component and (2) annual operation, maintenance, and purchase of services components. Your estimates should consider the costs to generate, maintain, disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and start-up costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, our estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

National Environmental Policy Act (NEPA) of 1969

We analyzed this proposed rule in accordance with the criteria of the NEPA and 516 Departmental Manual 6, Appendix 10.4C, ''issuance, and/or modification of regulations.'' MMS completed a Categorical Exclusion Review (CER) for this action on May 31, 2005, and concluded: ''The proposed rulemaking does not represent an exception to the established criteria for categorical exclusion. Therefore, preparation of an environmental document will not be required, and further documentation of this CER is not required.''

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This proposed rule is not a significant energy action, and therefore would not require a Statement of Energy Effects because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands on the OCS.

Clarity of This Regulation (Executive Order 12866)

Executive Order 12866 requires each agency to write regulations that are easy to understand. MMS invites 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 technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphs, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the ''Supplementary Information'' section of this preamble helpful in understanding the rule?

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 also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur.

Dated: January 31, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) proposes to revise 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*; 31 U.S.C. 9701.

2. Amend § 250.105 to revise the definition of ''Sensitive reservoir'' and add in alphabetical order definitions for ''Flaring'' and ''Venting'' to read as follows:

§ 250.105 Definitions.

* * * * *

Flaring means the burning of gas in the field as it is released into the atmosphere.

* * * * *

Sensitive reservoir means a reservoir in which high reservoir production rates will decrease ultimate recovery.

* * * * *

Venting means the release of gas into the atmosphere without igniting it. This includes gas that is released underwater and bubbles to the atmosphere.

* * * * *

3. In § 250.125, revise the table in paragraph (a) to read as follows:

§ 250.125 Service fees.

(a) * * *

SERVICE FEE TABLE

Service—processing of the following:	Fee amount	30 CFR citation
Change in Designation of Operator	$150	§ 250.143.
Suspension of Operations/Suspension of Production (SOO/SOP) Request.	$1,800	§ 250.171.
Exploration Plan (EP)	$3,250 for each surface location, no fee for revisions.	§ 250.211.
Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$3,750 for each well proposed, no fee for revisions.	§ 250.241(e).
Deepwater Operations Plan	$3,150	§ 250.292(p).
Conservation Information Document	$24,200	§ 250.296(a).
Application for Permit to Drill (APD; Form MMS–123).	$1,850.	
	Initial applications only, no fee for revisions	§ 250.410(d); § 250.411; § 250.460; § 250.513(b); § 250.515; § 250.1605; § 250.1617(a); § 250.1622.
Application for Permit to Modify (APM; Form MMS–124).	$110	§ 250.460; § 250.465(b); § 250.513(b); § 250.515; § 250.613(b); § 250.615; § 250.1618(a); § 250.1622; § 250.1704(g).
New Facility Production Safety System Application for facility with more than 125 components.	$4,750.	
	A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (incorporated by reference as specified in § 250.198) (Additional fee of $12,500 will be charged if MMS deems it necessary to visit a facility offshore; and $6,500 to visit a facility in a shipyard)	§ 250.802(e).
New Facility Production Safety System Application for facility with 25–125 components.	$1,150 (Additional fee of $7,850 will be charged if MMS deems it necessary to visit a facility offshore; and $4,500 to visit a facility in a shipyard)	§ 250.802(e).
New Facility Production Safety System Application for facility with fewer than 25 components.	$570	§ 250.802(e).
Production Safety System Application—Modification with more than 125 components reviewed.	$530	§ 250.802(e).
Production Safety System Application—Modification with 25–125 components reviewed.	$190	§ 250.802(e).

SERVICE FEE TABLE—Continued

Service—processing of the following:	Fee amount	30 CFR citation
Production Safety System Application—Modification with fewer than 25 components reviewed.	$80	§ 250.802(e).
Platform Application—Installation—under the Platform Verification Program.	$19,900	§ 250.905(k).
Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	$2,850	§ 250.905(k).
Platform Application—Installation—Caisson/Well Protector.	$1,450	§ 250.905(k).
Platform Application—Modification/Repair	$3,400	§ 250.905(k).
New Pipeline Application (Lease Term)	$3,100	§ 250.1000(b).
Pipeline Application—Modification (Lease Term)	$1,800	§ 250.1000(b).
Pipeline Application—Modification (ROW)	$3,650	§ 250.1000(b).
Pipeline Repair Notification	$340	§ 250.1008(e).
Pipeline Right-of-Way (ROW) Grant Application	$2,350	§ 250.1015.
Pipeline Conversion of Lease Term to ROW	$200	§ 250.1015.
Pipeline ROW Assignment	$170	§ 250.1018.
500 Feet From Lease/Unit Line Production Request.	$3,300	§ 250.1156.
Gas Cap Production Request	$4,200	§ 250.1157.
Downhole Commingling Request	$4,900	§ 250.1158.
Complex Surface Commingling and Measurement Application.	$3,550	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
Simple Surface Commingling and Measurement Application.	$1,200	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
Voluntary Unitization Proposal or Unit Expansion.	$10,700	§ 250.1303.
Unitization Revision	$760	§ 250.1303.
Application to Remove a Platform or Other Facility.	$4,100	§ 250.1727.
Application to Decommission a Pipeline (Lease Term).	$1,000	§ 250.1751(a) or § 250.1752(a).
Application to Decommission a Pipeline (ROW)	$1,900	§ 250.1751(a) or § 250.1752(a).

* * * * *

4. Revise subpart K to read as follows:

Subpart K—Oil and Gas Production Requirements

General

Sec.

250.1150 What are the general reservoir production requirements?

Well Tests and Surveys

250.1151 How often must I conduct well production tests?

250.1152 How do I conduct well tests?

250.1153 When must I conduct a static bottomhole pressure survey?

Classifying Reservoirs

250.1154 How do I determine if my reservoir is sensitive?

250.1155 What information must I submit for sensitive reservoirs?

Approvals Prior to Production

250.1156 What steps must I take to receive approval to produce within 500 feet of a unit or lease line?

250.1157 How do I receive approval to produce gas from an oil reservoir with an associated gas cap?

250.1158 How do I receive approval to downhole commingle hydrocarbons?

Production Rates

250.1159 May the Regional Supervisor limit my well or reservoir production rates?

Flaring, Venting, and Burning Hydrocarbons

250.1160 When may I flare or vent gas?

250.1161 When may I flare or vent gas for extended periods of time?

250.1162 When may I burn produced liquid hydrocarbons?

250.1163 How must I measure gas flaring or venting volumes and liquid hydrocarbon burning volumes and what records must I maintain?

250.1164 What are the requirements for flaring or venting gas containing H_2S?

Enhanced Recovery

250.1165 What must I do for enhanced recovery operations?

Special Alaska OCS Region Requirements

250.1166 What additional reporting is required for developments in the Alaska OCS Region?

Information Needed with Forms and for Approvals

250.1167 What information must I submit with forms and for approvals?

Subpart K—Oil and Gas Production Requirements

General

§ 250.1150 What are the general reservoir production requirements?

You must produce wells and reservoirs at rates that provide for economic development without harming ultimate recovery and without adversely affecting correlative rights.

Well Tests and Surveys

§ 250.1151 How often must I conduct well production tests?

(a) You must conduct well production tests as shown in the following table:

You must conduct:	And you must submit to the Regional Supervisor:
(1) A well-flow potential test on all new, recompleted, or reworked well completions within 30 days of the date of first continuous production.	Form MMS–126, Well Potential Test Report, along with the supporting data as listed in the table in § 250.1167, within 15 days after the end of the test period.

You must conduct:	And you must submit to the Regional Supervisor:
(2) At least one well test during a calendar half-year for each producing completion.	Results on Form MMS–128, Semiannual Well Test Report, of the most recent well test obtained. This must be submitted within 45 days after the end of the calendar half-year

(b) You may request an extension from the Regional Supervisor if you cannot submit the results of a semiannual well test within the specified time.

(c) You must submit an original and one copy of the form required by paragraph (a) of this section, as listed in the table in § 250.1167. You must include one public information copy with each submittal in accordance with §§ 250.190 and 250.196, and mark that copy ''Public Information.''

§ 250.1152 How do I conduct well tests?

(a) When you conduct well tests you must:

(1) Recover fluid from the well completion equivalent to the amount of fluid introduced into the formation during completion, recompletion, reworking, or treatment operations before you start a well test;

(2) Produce the well completion under stabilized rate conditions for at least 6 consecutive hours before beginning the test period;

(3) Conduct the test for at least 4 consecutive hours;

(4) Adjust measured gas volumes to the standard conditions of 14.73 pounds per square inch absolute (psia) and 60°F for all tests; and

(5) Use measured specific gravity values to calculate gas volumes.

(b) You may request approval from the Regional Supervisor to conduct a well test using alternative procedures if you can demonstrate test reliability under those procedures.

(c) The Regional Supervisor may also require you to conduct the following tests and complete them within the specified time period:

(1) A retest or a prolonged test of a well completion if it is determined to be necessary for the proper establishment of a Maximum Production Rate (MPR) or a Maximum Efficient Rate (MER); and

(2) A multipoint back-pressure test to determine the theoretical open-flow potential of a gas well.

(d) An MMS representative may witness any well test. Upon request, you must provide advance notice to the Regional Supervisor of the times and dates of well tests.

§ 250.1153 When must I conduct a static bottomhole pressure survey?

(a) You must conduct a static bottomhole pressure survey under the following conditions:

If you have:	Then you must conduct:
(1) A new producing reservoir	A static bottomhole pressure survey within 90 days after the date of first continuous production.
(2) A reservoir with three or more producing completions	Annual static bottomhole pressure surveys in a sufficient number of key wells to establish an average reservoir pressure. The Regional Supervisor may require that bottomhole pressure surveys be performed on specific wells.

(b) Your bottomhole pressure survey must meet the following requirements:

(1) You must shut-in the well for a minimum period of 4 hours to ensure stabilized conditions; and

(2) The bottomhole pressure survey must consist of a pressure measurement at mid-perforation, and pressure measurements and gradient information for at least four gradient stops coming out of the hole.

(c) You must submit to the Regional Supervisor the results of all static bottomhole pressure surveys on Form MMS–140, Bottomhole Pressure Survey Report, within 60 days after the date of the survey.

(d) The Regional Supervisor may grant a departure from the requirement to run a static bottomhole pressure survey. You must request a departure by letter, along with Form MMS–140, Bottomhole Pressure Survey Report. You must include sufficient justification to support the departure request.

Classifying Reservoirs

§ 250.1154 How do I determine if my reservoir is sensitive?

(a) You must determine whether each reservoir is sensitive. You must classify the reservoir as sensitive if:

(1) Under initial conditions it is an oil reservoir with an associated gas cap;

(2) At any time there are near-critical fluids; or

(3) The reservoir is undergoing secondary or tertiary recovery.

(b) For the purposes of this subpart, near-critical fluids are those fluids that occur in high temperature, high-pressure reservoirs where it is not possible to define the liquid-gas contact or fluids in reservoirs that are near bubble point or dew point conditions.

(c) The Regional Supervisor may reclassify a reservoir when available information warrants reclassification.

(d) If available information indicates that a reservoir previously classified as non-sensitive is now sensitive, you must submit a request to the Regional Supervisor to reclassify the reservoir. You must include supporting information, as listed in the table in § 250.1167, with your request.

(e) If information indicates that a reservoir previously classified as sensitive is now non-sensitive, you may submit a request to the Regional Supervisor to reclassify the reservoir. You must include supporting information, as listed in the table in § 250.1167, with your request.

§ 250.1155 What information must I submit for sensitive reservoirs?

You must submit an original and three copies of Form MMS–127 and supporting information, as listed in the table in § 250.1167 to the Regional Supervisor. You must include one public information copy with each submittal in accordance with §§ 250.190 and 250.196, and mark that copy ''Public Information.'' You must submit this information:

(a) Within 45 days after beginning production from the reservoir or discovering that it is sensitive;

(b) At least once during the calendar year;

(c) Within 45 days after you revise reservoir parameters; and

(d) Within 45 days after the Regional Supervisor classifies the reservoir as sensitive under § 250.1154(c).

Approvals Prior to Production

§ 250.1156 What steps must I take to receive approval to produce within 500 feet of a unit or lease line?

(a) You must obtain approval from the Regional Supervisor before you start producing from a well that has any portion of the completed interval less than 500 feet from a unit or lease line. Submit to MMS the service fee listed in § 250.125 and the Regional Supervisor will determine whether approval of your request will maximize ultimate recovery, avoids the waste of natural resources or whether it is necessary to protect correlative rights. You do not need to obtain approval if the adjacent leases or units have the same unit, lease, and royalty interests as the lease or unit you plan to produce. You do not need to obtain approval if the adjacent block is unleased.

(b) You must notify the operator(s) of adjacent property(ies) that are within 500 feet of the completion, if the adjacent acreage is a leased block in the Federal OCS. You must provide the Regional Supervisor proof of the date of the notification. The operators of the adjacent properties have 30 days after receiving the notification to provide the Regional Supervisor letters of acceptance or objection. If an adjacent operator does not respond within 30 days, the Regional Supervisor will presume there are no objections and proceed with a decision. The notification must include:

(1) The well name;

(2) The rectangular coordinates (x, y) of the location of the top and bottom of the completion or target completion reference to the North American Datum 1983, and the subsea depths of the top and bottom of the completion or target completion;

(3) The distance from the completion or target completion to the unit or lease line at its nearest point; and

(4) A statement indicating whether or not it will be a high-capacity completion having a perforated or open hole interval greater than 150 feet measured depth.

§ 250.1157 How do I receive approval to produce gas from an oil reservoir with an associated gas cap?

You must request and receive written approval from the Regional Supervisor before producing gas from each completion in an oil reservoir that is known to have an associated gas cap. If the oil reservoir is not initially known to have an associated gas cap, but your oil well begins to show characteristics of a gas well, you must request and receive written approval from the Regional Supervisor to continue producing the well. You must include the service fee listed in § 250.125 and the supporting information, as listed in the table in § 250.1167, with your request.

§ 250.1158 How do I receive approval to downhole commingle hydrocarbons?

(a) Before you perforate a well, you must request and receive approval from the Regional Supervisor to commingle hydrocarbons produced from multiple reservoirs within a common wellbore. The Regional Supervisor will determine whether your request maximizes ultimate recovery and avoids the waste of natural resources. You must include the service fee listed in § 250.125 and the supporting information, as listed in the table in § 250.1167, with your request.

(b) If one or more of the commingled reservoirs is a competitive reservoir, you must notify the operators of all leases that contain the reservoir that you intend to downhole commingle the reservoirs. Your request for approval of downhole commingling must include proof of the date of this notification. The notified operators have 30 days after notification to provide the Regional Supervisor with letters of acceptance or objection. If the notified operators do not respond within the specified period, the Regional Supervisor will assume the operators do not object and proceed with a decision.

Production Rates

§ 250.1159 May the Regional Supervisor limit my well or reservoir production rates?

(a) The Regional Supervisor may set a Maximum Production Rate (MPR) for a producing well completion, or set a Maximum Efficient Rate (MER) for a reservoir, or both, if the Regional Supervisor determines that an excessive production rate could harm ultimate recovery. An MPR or MER will be based on well tests and any limitations imposed by well and surface equipment, sand production, reservoir sensitivity, gas-oil and water-oil ratios, location of perforated intervals, and prudent operating practices.

(b) If the Regional Supervisor sets an MPR for a producing well completion, or an MER for a reservoir, you may not exceed those rates except due to normal variations and fluctuations in production rates, as set by the Regional Supervisor.

Flaring, Venting, and Burning Hydrocarbons

§ 250.1160 When may I flare or vent gas?

(a) You must receive approval from the Regional Supervisor to flare or vent oil-well gas or gas-well gas at your facility, except in the following situations:

Condition	Additional requirements
(1) When the gas is lease use gas (produced natural gas which is used on or for the benefit of lease operations such as gas used to operate production facilities) or is used as an additive necessary to burn waste products, such as H_2S.	The volume of gas flared or vented may not exceed the amount necessary for its intended purpose. Burning waste products may require approval under other regulations.
(2) During the restart of a facility that was shut in because of weather conditions, such as a hurricane.	Flaring or venting may not exceed 48 cumulative hours without Regional Supervisor approval.
(3) During the blow down of transportation pipelines downstream of the royalty meter.	(i) You must report the location, time, flare/vent volume, and reason for flaring/venting to the Regional Supervisor in writing within 72 hours after the incident is over. (ii) Additional approval may be required under subparts H and J of this part.
(4) During the unloading or cleaning of a well, drill-stem testing, production testing, other well-evaluation testing, or the necessary blow down to perform these procedures.	You may not exceed 48 cumulative hours of flaring or venting per testing operation on a single completion without Regional Supervisor approval.
(5) When properly working equipment yields flash gas (natural gas released from liquid hydrocarbons as a result of a decrease in pressure, an increase in temperature, or both) from storage vessels or other low-pressure production vessels, and you cannot economically recover this flash gas.	You may not flare or vent more than an average 50 MCF per day during any calendar month without Regional Supervisor approval.

Condition	Additional requirements
(6) When the equipment works properly but there is a temporary upset condition, such as a hydrate or paraffin plug.	(i) For oil-well gas and gas-well flash gas (natural gas released from condensate as a result of a decrease in pressure, an increase in temperature, or both), you may not exceed 48 continuous hours of flaring or venting without Regional Supervisor approval. (ii) For primary gas-well gas (natural gas from a gas well completion that is at or near its wellhead pressure; this does not include flash gas), you may not exceed 2 continuous hours of flaring or venting without Regional Supervisor approval. (iii) You may not exceed 144 cumulative hours of flaring or venting during a calendar month without Regional Supervisor approval.
(7) When equipment fails to work properly, including equipment maintenance and repair, or when you must relieve system pressures.	(i) For oil-well gas and gas-well flash gas, you may not exceed 48 continuous hours of flaring or venting without Regional Supervisor approval. (ii) For primary gas-well gas, you may not exceed 2 continuous hours of flaring or venting without Regional Supervisor approval. (iii) You may not exceed 144 cumulative hours of flaring or venting during a calendar month without Regional Supervisor approval. (iv) The continuous and cumulative hours allowed under this paragraph may be counted separately from the hours under paragraph (a)(6) of this section.

(b) You must inform the Regional Supervisor and receive approval to flare or vent gas before you exceed the volume specified in your Development and Production Plan submitted under subpart B of this part, even if the flaring or venting does not require approval under paragraph (a) of this section. The Regional Supervisor will determine whether your proposed flaring or venting complies with air emission thresholds under subpart C of this part.

(c) The Regional Supervisor may establish alternative approval procedures to cover situations where you cannot contact the MMS office, such as during non-office hours.

(d) The Regional Supervisor may specify a volume limit, or a shorter time limit than specified elsewhere in this part, in order to prevent air quality degradation or loss of reserves.

(e) The Regional Supervisor will evaluate your request for gas flaring or venting and determine if the loss of hydrocarbons is due to negligence, or could be avoided.

(f) If you flare or vent gas without the required approval, or if the Regional Supervisor determines that you were negligent or could have avoided flaring or venting the gas, the hydrocarbons will be considered avoidably lost or wasted. You must pay royalties on the loss or waste, according to part 202 of this title. You must value any gas or liquid hydrocarbons avoidably lost or wasted under the provisions of part 206 of this title.

§ 250.1161 When may I flare or vent gas for extended periods of time?

You may flare or vent oil-well gas and gas-well flash gas for a period that the Regional Supervisor will specify, and which will not exceed 1 year, if the Regional Supervisor approves your request for one of the following reasons:

(a) You initiate an action which, when completed, will eliminate flaring and venting;

(b) You submit to the Regional Supervisor an evaluation supported by engineering, geologic, and economic data indicating that the oil and gas produced from the well(s) will not economically support the facilities necessary to sell the gas; or to use the gas on or for the benefit of, the lease; or

(c) The Regional Supervisor determines that an improperly working valve, pipe fitting, or similar component results in flaring or venting of less than 10 MCF per day, and that it is prudent to repair the leak at a later date. The Regional Supervisor may exempt this flaring or venting from the time limits set in § 250.1160.

§ 250.1162 When may I burn produced liquid hydrocarbons?

(a) You must request and receive approval from the Regional Supervisor to burn any produced liquid hydrocarbons. The Regional Supervisor may allow you to burn condensate if you demonstrate that transporting it to market or re-injecting it is not feasible or poses a significant risk of harm to offshore personnel or the environment. In most cases, the Regional Supervisor will not allow you to burn more than 300 barrels of condensate in total during unloading or cleaning of a well, drill-stem testing, production testing, or other well-evaluation testing.

(b) The Regional Supervisor will evaluate your request for liquid hydrocarbon burning, and determine if the loss of hydrocarbons is due to negligence or could be avoided.

(c) If you burn liquid hydrocarbons without the required approval, or if the Regional Supervisor determines that you were negligent or could have avoided burning liquid hydrocarbons, the hydrocarbons will be considered avoidably lost or wasted. You must pay royalties on the loss or waste, according to part 202 of this title. You must value any liquid hydrocarbons avoidably lost or wasted under the provisions of part 206 of this title.

§ 250.1163 How must I measure gas flaring or venting volumes and liquid hydrocarbon burning volumes and what records must I maintain?

(a) If your facility processes more than an average of 2,000 BOPD during [MONTH AND YEAR IN WHICH FINAL RULE IS PUBLISHED], you must install flare/vent meters within 120 days after [THE MONTH AND YEAR IN WHICH THE FINAL RULE IS PUBLISHED]. If your facility processes more than an average of 2,000 BOPD during a calendar month after [MONTH AND YEAR IN WHICH FINAL RULE IS PUBLISHED], you must install flare/vent meters within 90 days after the end of the month in which the average amount of oil processed exceeds 2,000 BOPD.

(1) The flare/vent meters must measure all flared and vented gas within 2 percent accuracy.

(2) You must calibrate the meters regularly, in accordance with the manufacturer's recommendation, or at least once every 6 months, whichever is shorter.

(b) You must report all hydrocarbons produced from a well completion, including all gas flared, gas vented, and liquid hydrocarbons burned, to Minerals Revenue Management on Form MMS–4054 (Oil and Gas Operations Report), in accordance with § 216.53 of this title.

(1) You must report the amount of gas flared and the amount of gas vented separately.

(2) You may classify and report gas used to operate equipment on the facility (such as gas used to power engines, gas used as pilot lights, instrument gas, purge gas used to prevent oxygen from entering the flare or vent stack, sparge gas used to regenerate glycol, and blanket gas used to maintain pressure in low pressure vessels) as lease use gas.

(3) You must report the amount of gas flared and vented at each facility on a lease or unit basis. Gas flared and vented from multiple facilities on a single lease or unit must be reported separately.

(c) You must prepare and maintain records detailing gas flaring, gas venting, and liquid hydrocarbon burning for each facility. You must maintain these records for the period specified in part 212 of this title. You must keep these records on the facility for 2 years and have them available for inspection by MMS representatives. After 2 years, you must maintain the records, allow MMS representatives to inspect the records upon request, and provide copies to the Regional Supervisor upon request, but you are not required to keep them on the facility. The records must include, at a minimum:

(1) Daily volumes of gas flared, gas vented, and liquid hydrocarbons burned;

(2) Number of hours of gas flaring, gas venting, and liquid hydrocarbon burning, on a daily basis;

(3) A list of the wells contributing to gas flaring, gas venting, and liquid hydrocarbon burning, along with gas-oil ratio data;

(4) Reasons for gas flaring, gas venting, and liquid hydrocarbon burning; and

(5) Documentation of all required approvals.

(d) If your facility is required to have flare/vent meters, you must maintain the meter recordings for the period specified in §§ 212.50 and 212.51 of this title. You must keep these recordings on the facility for 2 years and have them available for inspection by MMS representatives. After 2 years, you must maintain the recordings, allow MMS representatives to inspect the recordings upon request, and provide copies to the Regional Supervisor upon request, but are not required to keep them on the facility. These recordings must include the begin times, end times, and volumes for all flaring and venting incidents.

(e) If your flaring or venting of gas, or burning of liquid hydrocarbons, required written or oral approval, you must submit documentation to the Regional Supervisor summarizing the location, dates, number of hours, and volumes of gas flared, gas vented, and liquid hydrocarbons burned under the approval, as required under § 250.140.

§ 250.1164 What are the requirements for flaring or venting gas containing H_2S?

(a) You may not vent gas containing H_2S, except for minor releases during maintenance and repair activities that do not result in a 15-minute time-weighted average atmosphere concentration of H_2S of 20 ppm or higher anywhere on the platform.

(b) You may flare gas containing H_2S only if you meet the requirements of §§ 250.1160, 250.1161, 250.1163, and the following additional requirements:

(1) You may not emit more than 15 lbs of SO_2 per hour per mile from shore, without approval from the Regional Supervisor;

(2) For safety or air pollution prevention purposes, the Regional Supervisor may further restrict the flaring of gas containing H_2S. The Regional Supervisor will use information provided in the lessee's H_2S Contingency Plan (§ 250.490(f)), Exploration Plan, Development and Production Plan, Development Operations Coordination Document, and associated documents to determine the need for restrictions; and

(3) If the Regional Supervisor determines that flaring at a facility or group of facilities may significantly affect the air quality of an onshore area, the Regional Supervisor may require you to conduct an air quality modeling analysis to determine the potential effect of facility emissions. The Regional Supervisor may require monitoring and reporting, or may restrict or prohibit flaring, under §§ 250.303 and 250.304.

(c) You must report flared and vented gas containing H_2S as required under § 250.1163. In addition, the Regional Supervisor may require you to submit monthly reports of flared and vented gas containing H_2S. Each report must contain, on a daily basis:

(1) The volume and duration of each flaring and venting occurrence;

(2) H_2S concentration in the flared or vented gas; and

(3) The calculated amount of SO_2 emitted.

Enhanced Recovery

§ 250.1165 What must I do for enhanced recovery operations?

(a) You must promptly initiate enhanced oil and gas recovery operations for all reservoirs where these operations would result in increased ultimate recovery of oil or gas under sound engineering and economic principles.

(b) Before initiating enhanced recovery operations, you must submit a proposed plan to the Regional Supervisor and receive approval for pressure maintenance, secondary or tertiary recovery, cycling, and similar recovery operations intended to increase the ultimate recovery of oil and gas from a reservoir. The proposed plan must include, for each project reservoir, a brief geologic and engineering overview, structure map, well log section, Form MMS–127, and any additional information required by the Regional Supervisor.

(c) You must report to Minerals Revenue Management the volumes of oil, gas, or other substances injected, produced, or produced for a second time under § 216.53 of this title.

Special Alaska OCS Region Requirements

§ 250.1166 What additional reporting is required for developments in the Alaska OCS Region?

(a) For any development in the Alaska OCS Region, you must submit an annual reservoir management report to the Regional Supervisor. The report must contain information detailing the activities performed during the previous year and planned for the upcoming year that will provide for:

(1) The prevention of waste;

(2) The protection of correlative rights; and

(3) A greater ultimate recovery of oil and gas.

(b) If your development is jointly regulated by MMS and the State of Alaska, MMS and the AOGCC will jointly determine appropriate reporting requirements to minimize or eliminate duplicate reporting requirements.

(c) Every time you are required to submit Form MMS–127 under § 250.1155, you must request an MER for each producing sensitive reservoir in the Alaska OCS Region, unless otherwise instructed by the Regional Supervisor.

Information Needed With Forms and for Approvals

§ 250.1167 What information must I submit with forms and for approvals?

You must submit the supporting information listed in the following table with the forms and for the approvals required under this subpart:

	WPT MMS–126	SRI MMS–127	Gas cap production	Downhole commingling	Reservoir reclassification	Production within 500-ft of a Unit or Lease Line
(a) Maps:						
(1) Base map with surface, bottomhole, and completion locations with respect to the unit or lease line and the orientation of representative seismic lines or cross sections	.....	.....	✓	✓	.....	✓
(2) Structure maps with penetration point and subsea depth for each well penetrating the reservoirs, highlighting subject wells; reservoir boundaries; and original and current fluid levels	✓	✓	✓	✓	✓	✓
(3) Net sand isopach with total net sand penetrated for each well, identified at the penetration point	.....	✓	✓	✓	.....	.....
(4) Net hydrocarbon isopach with net feet of pay for each well, identified at the penetration point	.....	✓	✓	✓	.....	.....
(b) Seismic data:						
(1) Representative seismic lines, including strike and dip lines that confirm the structure; indicate polarity	.....	.....	✓	✓	.....	✓
(2) Time/depth correlation table for seismic data	.....	.....	✓	✓	.....	✓
(3) Amplitude extraction of seismic horizon, if applicable	.....	✓	✓	✓	✓	✓
(c) Logs:						
(1) Well log sections with tops and bottoms of the reservoir(s) and proposed or existing perforations	✓	✓	✓	✓	✓	✓
(2) Structural cross-sections showing the subject well and nearby wells	.....	.....	✓	✓	✓	.....
(d) Engineering Data:						
(1) Estimated recoverable reserves for each well completion in the reservoir; total recoverable reserves for each reservoir; method of calculation; reservoir parameters used in volumetric and decline curve analysis	.....	✓	†	†	.....	✓
(2) Well schematics showing current and proposed conditions	.....	.....	✓	✓	.....	✓
(3) The drive mechanism of each reservoir	.....	✓	✓	✓	✓	✓
(4) Pressure data, by date, and whether they are estimated or measured	.....	.....	✓	✓	✓	.....
(5) Production data and decline curve analysis indicative of the reservoir performance	.....	.....	✓	✓	✓	.....
(6) Reservoir simulation with the reservoir parameters used, history matches, and prediction runs (include proposed development scenario)	.....	.....	*	*	*	*
(e) General information:						
(1) Detailed economic analysis	.....	.....	*	*	.....	.....
(2) Reservoir name and whether or not it is competitive as defined under § 250.105	.....	✓	✓	✓	✓	✓
(3) Operator name, lessee name(s), block, lease number, royalty rate, and unit number (if applicable) of all relevant leases	.....	.....	.....	✓	.....	✓
(4) Brief geologic overview of project	.....	.....	✓	✓	✓	✓
(5) Explanation of why the proposed completion scenario will not harm ultimate recovery	.....	.....	✓	✓	.....	✓

	WPT MMS–126	SRI MMS–127	Gas cap production	Downhole commingling	Reservoir reclassification	Production within 500-ft of a Unit or Lease Line
(6) List of all wells in subject reservoirs that have ever produced or been used for injection			✓	✓	✓	✓

† Each Gas Cap Production request and Downhole Commingling request should include the estimated recoverable reserves for (1) the case where your proposed production scenario is approved, and (2) the case where your proposed production scenario is denied.

* Additional items the Regional Supervisor may request.

Note: All maps must be at a standard scale and show lease and unit lines. If you have not generated all of the required data for your own purposes, you may submit those data you have available for consideration.

(f) Depending on the above requirement, you must submit appropriate payment of the service fee(s) listed in § 250.125.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 07–003]

RIN 1625–AA00

Safety Zone; Liberty Island Conductor Removal, Sacramento River, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in the navigable waters of the Sacramento River that will prohibit vessels and people from entering into or remaining within close proximity to the deep water channel. Pacific Gas and Electric Company (PG&E) will be removing a conductor from the Liberty Island towers, two of which cross over the deep water channel, on March 28, 2007. The proposed safety zone will close the deep water channel for approximately 30 minutes during the conductor removal.

DATES: Comments and related material must reach the Coast Guard on or before March 14, 2007.

ADDRESSES: You may mail comments and related material to United States Coast Guard Sector San Francisco, Waterways Safety Branch, Yerba Buena Island, Bldg. 278, San Francisco, California, 94130. The Waterways Safety Branch of Sector San Francisco maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Safety Branch of Sector San Francisco between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric Ramos, U.S. Coast Guard Sector San Francisco, at (415) 556–2950 or Sector San Francisco 24-hour Command Center at (415) 399–3547.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP SF 07–003), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector San Francisco, Waterways Safety Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

PG&E will be removing a conductor from the Liberty Island towers on March 28, 2007. Two of the towers cross the Sacramento deep water channel. PG&E will use a helicopter to cut the conductor off of one tower and it will fall into the water. They will then recover the cut conductor and place it on the bank before continuing to remove the rest of the conductors from the remaining towers that are over land.

Discussion of Proposed Rule

This proposed safety zone will encompass the navigable waters of the Sacramento River from the surface to the sea floor, encompassing a circular area with a 500-yard radius at position 38°17.072′N / 121°39.619′W (NAD 83) for the removal of a conductor from a tower that crosses over the deep water channel. This proposed safety zone is necessary to protect persons and vessels from hazards, injury, and damage associated with the conductor removal.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this rule will restrict access to the waters encompassed by the proposed safety zone, the effect of this rule is not expected to be significant because the local waterway users will be notified via public broadcast notice to mariners to ensure the proposed safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

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

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This safety zone is not expected to have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for approximately 30 minutes. Although the safety zone will apply to the entire width of the channel, traffic may be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, we will issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact (see **ADDRESSES**). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T11–171, to read as follows:

§ 165.T11–171 Safety Zone; Sacramento River Deep Water Channel, California.

(a) *Location.* This safety zone encompasses the navigable waters of the Sacramento River from the surface to the sea floor and is bounded by the arc of a circle with a 500-yard radius from position 38°17.072′N 121°39.619′W (NAD 83).

(b) *Effective Date.* This rule will be in effect on March 28, 2007 from approximately 11 a.m. through 11:30 a.m.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons will be prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

Dated: February 16, 2007.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. E7–3804 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2005–0031; FRL–8283–5]

RIN 2060–AN97

Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971; Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: EPA is announcing the extension of the public comment period on the proposed reconsideration amendments to the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. EPA originally requested comments on the proposed rule by March 12, 2007 (February 9, 2007,72 FR 6320). EPA is extending the deadline to March 26, 2007, and is now requesting written comments by that date. EPA received a request for a 15 day extension to the comment period from the Utility Air Regulatory Group, the Council of Industrial Boiler Owners, and the Coke Oven Environmental Task Force. The reason given for requesting the extension was the need for additional time to gather data and review the proposed amendments. Since the original comment period was 30 days, EPA finds this request reasonable.

DATES: *Comments.* Comments must be received on or before March 26, 2007.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0031, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *By Facsimile:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, U.S. EPA, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* EPA Docket Center, Docket ID Number EPA–HQ–OAR–2005–0031, EPA West Building, 1301 Constitution Ave., NW., Room 3334, Washington, DC, 20004. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm. Docket:* All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, facsimile number (919) 541–5450, electronic mail (e-mail) address: *fellner.christian@epa.gov.*

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 28, 2007.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. E7–3878 Filed 3–5–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA–2006–26174]

RIN 2130–AB83

Locomotive Safety Standards; Sanders

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to revise the existing requirements related to sanders on locomotives. The proposed rule would modify the existing regulations by permitting additional flexibility in the use of locomotives with inoperative sanders. The proposal would provide railroads the ability to better utilize their locomotive fleets while ensuring that locomotives are equipped with operative sanders in situations where they provide the most benefit from a safety and operational perspective. The proposed rule would also make the regulations related to operative sanders more consistent with existing Canadian standards related to the devices.

DATES: (1) Written comments must be received by May 7, 2007. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to April 5, 2007, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2006–26174, may be submitted by any of the following methods:

Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: George Scerbo, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS–14, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6247), or Michael Masci, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

FRA has broad statutory authority to regulate railroad safety. The Locomotive Inspection Act (formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703) was enacted in 1911. It prohibits the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49) (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into title 49.).

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address the safety of railroad track, signal systems, communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of locomotive safety, FRA has issued regulations, found at 49 CFR part 229 (''part 229''), addressing topics such as inspections and tests, safety requirements for brake, draft, suspension, and electrical systems, and cabs and cab equipment. All references to parts and sections in this document shall be to parts and sections located in Title 49 of the Code of Federal Regulations. FRA continually reviews its regulations and revises them as needed to keep up with emerging technology.

On July 12, 2004, the Association of American Railroads (AAR), on behalf of itself and its member railroads, petitioned the FRA to delete the requirement as contained in 49 CFR 229.131. The petition and supporting documentation asserted that contrary to popular belief, depositing sand on the rail will not have any significant influence on the emergency stopping distance of a train. Subsequent to the petition, FRA and interested industry members began identifying various issues related to locomotive safety standards with the intent that FRA would potentially address the issues through its Railroad Safety Advisory Committee (RSAC).

II. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Association (ATDA)
Amtrak

Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employees Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA)*
High Speed Ground Transportation Association (HSGTA)
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA)*
League of Railway Industry Women*
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women*
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
National Railroad Passenger Corporation (Amtrak)
National Transportation Safety Board (NTSB)*
Railway Supply Institute (RSI)
Safe Travel America (STA)
Secretaria de Communicaciones y Transporte*
Sheet Metal Workers International Association (SMWIA)
Tourist Railway Association Inc.
Transport Canada*
Transport Workers Union of America (TWU)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)

*Indicates associate membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If a task is accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or the RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

III. Proceedings to Date

On February 22, 2006, FRA presented, and the RSAC accepted, the task of reviewing existing locomotive safety needs and recommending consideration of specific actions useful to advance the safety of rail operations. The RSAC established the Locomotive Safety Standards Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, included the following:

APTA
ASLRRA
Amtrak
AAR
ASRSM
BLET
BMWE
BRS
BNSF Railway Company (BNSF)
California Department of Transportation
Canadian National Railway (CN)
Canadian Pacific Railway (CP)
Conrail
CSX Transportation (CSXT)
Florida East Coast Railroad
General Electric (GE)
Genesee & Wyoming Inc.
International Association of Machinists and Aerospace Workers
IBEW
Kansas City Southern Railway (KCS)
Long Island Rail Road
Metro-North Railroad
MTA Long Island
National Conference of Firemen and Oilers
Norfolk Southern Corporation (NS)
Public Service Commission of West Virginia
Rail America, Inc.
Southeastern Pennsylvania Transportation Agency
SMWIA
STV, Inc.
Tourist Railway Association Inc.
Transport Canada
Union Pacific Railroad (UP)
UTU
Volpe Center
Wabtech Corporation
Watco Companies

The task statement approved by the full RSAC sought immediate action from the Working Group regarding the need for and usefulness of the existing regulation related to locomotive sanders. The task statement established a target date of 90 days for the Working Group to report back to the RSAC with recommendations to revise the existing regulatory sander provision. The Working Group conducted two meetings that focused almost exclusively on the sander requirement. The meetings were held on May 8–10, 2006, in St. Louis, Missouri, and on August 9–10, 2006, in Fort Worth, Texas. Minutes of these meetings have been made part of the docket in this proceeding. After broad and meaningful discussion related to the potential safety and operational benefits provided by equipping locomotives with operative sanders, the Working Group reached consensus on a recommendation for the full RSAC.

On September 21, 2006, the full RSAC unanimously adopted the Working Group's recommendation on locomotive sanders as its recommendation to FRA. The RSAC recommendation included the Working Group's consensus rule text, and requested that FRA draft a regulatory proposal related to the use of sanders on locomotives performing switching service at outlying locations. The Working Group's discussion of outlying locations had been based on an apparent need to distinguish locations that did not have sufficient access to a sand delivery system from those that do have such access. FRA has reviewed and accepted RSAC's recommendation and has developed this regulatory proposal based on that recommendation. The specific regulatory language recommended by the RSAC has been amended slightly for clarity and consistency and FRA has independently developed provisions related to the use of sanders on locomotives used in switching service at outlying locations.

FRA agrees with the Working Group's determination that locomotive sanders provide limited safety benefits and that the primary benefits derived from the devices are operational. Accordingly, this proposal attempts to preserve the limited safety benefits while addressing the overly restrictive nature of the

existing provision. This proposal is intended to provide appropriate relief from the existing requirement by creating a more precise standard. Under the existing requirements, a locomotive cannot depart from a daily inspection with inoperative sanders and can only move as far as the next daily inspection if sanders become inoperative en route. The proposal attempts to require sander maintenance based on operational realities instead of the current time-based standard. The NPRM provides relief according to specific identified operational conditions. The proposal distinguishes between the following conditions: Lead and non-lead locomotives; locomotives in road service and switching service; and, locomotives at locations with or without a sand delivery system. These distinctions would modify the current requirement to better reflect railroad operations while maintaining the current level of safety. The proposed rule would also harmonize the sander requirement with the Canadian rule by placing a fourteen day limit on service for lead locomotives in road service with inoperative sanders, in lieu of the current requirement.

Throughout the preamble discussion of this proposal, FRA refers to comments, views, suggestions, or recommendations made by members of the Working Group. When using this terminology, FRA is referring to views, statements, discussions or positions identified or contained in the minutes of the Working Group meetings. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the **ADDRESSES** portion of this document. These points are discussed to show the origin of certain issues and the course of discussions on those issues at the task force or working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is acting.

IV. Technical Background

On July 12, 2004, the AAR, on behalf of itself and its member railroads, petitioned the FRA to delete the requirement as contained in 49 CFR 229.131, which states, ''[e]xcept for MU locomotives, each locomotive shall be equipped with operable sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement.'' AAR's rationale for its petition was that, despite being in existence for many decades, this requirement does not provide any safety benefit. Enclosed with the petition was a presentation by CN to the 81st Annual Meeting of the Air Brake Association in September 1989. In that presentation, CN reported on a number of tests that measured the stopping distances of a train from emergency braking with and without sanding, with the conclusion that sanding from the locomotive consistently did not have any significant influence upon the emergency stopping distance of freight trains. Subsequently, FRA reviewed the overall operation of locomotive sanders to fully evaluate the petition. In addition to stopping distances, FRA examined other ramifications that the lack of sanding may have on the operation of locomotives and trains. For each technical aspect affected, FRA wanted to determine if it affects safety, operation efficiency, or both.

A. Adhesion

A generally recognized benefit of sanding is improved adhesion of the locomotive wheels to the rail. The maximum force or pull that a locomotive can generate in order to pull a train is limited by the weight of the locomotive and the amount of adhesion that it can maintain without wheel slippage. Once the wheel starts to slip, the pulling force is greatly reduced. Adhesion is critical for the locomotive pulling power on a steep grade. For a heavy freight train, the grade resistance will slow the train in an uphill move. As the speed drops, the tractive effort of the locomotive consist will go up. At a certain speed, the tractive effort may balance the total resistance including that from the grade. In that case, a constant speed can be maintained for the train to crest over the peak. However, at a low speed, the adhesion limit becomes an important factor because the maximum tractive effort that the locomotives can develop to pull the train is the product of the locomotive weight and the adhesion limit. Heavier six-axle locomotives can develop a higher tractive effort than the lighter four-axle locomotives of the same horsepower. If this maximum tractive effort is not sufficient to overcome the total resistance, the train will eventually stall on this grade. The presence of a stalled train on mainline track creates a safety issue as well as an apparent operational inconvenience. In addition, a stalled train at a grade crossing could tempt pedestrians to cross through the train. As the pedestrian crosses, the train could move and injure the pedestrian. The use of sand could prevent such a potentially dangerous situation.

If the total horsepower results in force output higher than the maximum tractive effort that the adhesion between rail and wheel can provide, wheel slip will occur resulting in the actual pulling force being limited by the maximum tractive effort. Under this condition, sanding will provide a higher adhesion coefficient, boosting the maximum tractive effort. In some previous studies with conventional DC motors, the adhesion limit with smooth wheels on smooth rails can be as low as 10 percent under wet rail condition. With sanding, the adhesion can be increased to 30 percent. The same principle applies to AC motors, except that the adhesion limits with and without sanding will both be higher because of the inherent advantage of AC motors. For dispatching purposes, the railroads produce tonnage-rating tables that are used to determine the number and the kind of locomotives to be assigned to a train given its length and weight. These tables are often developed with the assumption that sanding is available to boost the adhesion limit. Appropriate adhesion limits with the use of sanding are assumed for various types of locomotive equipment to calculate the available maximum tractive effort to ensure that trains will not stall on the ruling grade. This is particularly important for heavy merchandise trains, unit coal trains, and unit mineral trains. Speed is not very important for these trains. For better asset utilization and overall operation efficiency, railroads want to assign just enough locomotive units to enable the trains to climb up the ruling grade at low speed but not to stall. Sanding is very useful to increase the tractive effort. Using sanding to improve adhesion, railroads can reduce the number of locomotives assigned to a train, resulting in lower locomotive cost, one of the important factors in the overall cost structure of a rail operation.

Sanding will increase the capability of a train to climb up the ruling grade. While lack of sanding will affect the efficiency of train operations and will become a safety issue if the train stalls on the track, the operational issue may be resolved if the locomotive engineer handles the situation to prevent undesirable consequences from wheel slipping. With automatic wheel slip control, the system will see wheel slip, cut power to the traction motor for a short duration, and reapply the power. If the engineer maintains the high throttle position, the traction motor will again overpower the adhesion, and the wheels will slip again. This continuous

recycling of power on and power off of the traction motors will cause the locomotive to chatter loudly. This phenomenon may cause damage to wheel and rail. The train forces may spike high and low, leading to track train dynamics problems. Sometimes rail corrugation and rail burns are attributed to continuous wheel slipping, which is a common practice. Under this circumstance, the locomotives should be throttled down gradually to avoid long duration of wheel slipping. The train should be anchored on the grade, and the crew should call for help. Although the various railroads' airbrake and train-handling manuals do not describe this instruction and procedure, it is a common practice for an underpowered train with insufficient pulling force to successfully operate up a grade with or without sanding.

Some members of the Working Group raised the concern that damage to rail from slipping wheels can lead to development of transverse defects and broken rails. Corrugation and shelling of the rail head can mask internal rail defects and can defeat internal rail flaw detection. These circumstances can lead to train derailments unless they are properly managed, and the heavy cumulative tonnages experienced by most rail now in service is already taxing the ability of the railroads to manage these issues successfully. Railroads are expected to manage these issues and have done so thus far. FRA invites comments on this issue.

B. Braking Distance

As sanding may increase the coefficient of friction between wheel and rail, one may anticipate that sanding can reduce the stopping distance of a train from braking, especially on wet rail. However, the following factors should be considered before drawing such a conclusion:

- The increase in friction is on the first few sets of axles only (i.e., on the locomotives). Sanding will splash and be dispersed rather quickly from the rails once several wheels roll over it. Over 90 percent of the wheels in a train will likely not receive any benefit from sanding. Thus, it is unlikely that the stopping distance will be affected by it.
- Wet rail and dirty rail can be dried out and cleaned out rather quickly with the rolling of several axles on it. In numerous field tests, the second locomotive's tractive effort is always 20–30 percent higher than the first unit, especially on wet rail. This is an indication that the rail can be dried out and cleaned out just by one locomotive passing over it. Therefore, wet rail conditions will only affect one to two locomotives, and the rest of a train will be braked on relatively dry conditions, even though the rails are originally wet. Given the above explanation, sanding will hardly make any difference in the braking performance of all the cars behind the locomotives.
- Engineers have been trained to rely on dynamic brakes instead of the pneumatic brakes, unless during extreme emergency situations. In emergency braking, little difference will occur in stopping distance with or without sanding because, as explained earlier, sanding likely only affects, if any, the braking efforts of the first few axles.
- When insufficient adhesion prevails during braking, the wheels may slide. The coefficient of friction during this sliding will maintain the retardation rate of the trains.

Therefore, it is not surprising that the results of CN's testing show that the emergency braking stopping distances under various speeds and conditions were unchanged by sanding. However, the results of the test of the stopping distances of a short VIA passenger train with and without sanding were somewhat less expected. The conclusion for the VIA test was the same as that for the freight trains. As the train consist is very short for the passenger trains, typically as short as several vehicles, the factors described above are not all applicable to the passenger trains. It may be expected that some effect would occur on the stopping distance of a passenger train as a result of sanding. The vehicles in the tested passenger trains had mixed wheel and disk braking, but it is not clear as to how disk braking is affected by sanding. Nonetheless, the tests with VIA trains, submitted by the AAR with the petition, showed that sanding had no effect in the stopping distance of the trains. Even if sanding can affect the braking of these short passenger trains, we should note that the stopping distance of a short passenger train is extremely short compared to the heavy freight trains, and therefore the actual difference in the stopping distance will not be too significant. Some MU equipment always avoids sanding because this equipment is light and the number of axles in a train is usually small, thus, rail-shunting ability may get affected by sanding. This is the primary reason why the MU equipment is not equipped with sanders.

The braking distance tests submitted by the railroads did not include stopping distances for ''lite'' locomotive consists. Locomotives are frequently moved without cars in order to reposition power. Lite locomotives do not respond favorably to braking because of the ratio of axle load to available rail/wheel contact zone. Despite results in other brake tests, FRA would expect that sand applied on multiple axles could be an important contributor to maintaining satisfactory stopping distances of lite locomotive consists under unfavorable conditions (wet rail, etc.).

FRA also notes that the Working Group received little information related to actual use of sand in conjunction with extended range dynamic braking, which is now used extensively to slow trains and (with rolling resistance and perhaps the independent brake) bring them to a stop. Locomotive engineers may utilize dynamic brakes rather than the automatic train brake, where possible, in order to conserve fuel and avoid mechanical problems.

C. Operating Rules and Training

In order to determine what instructions each railroad gives to the locomotive engineers on the use of sanding, FRA obtained and reviewed the air braking and train handling manuals of NS, CSXT, UP, and BNSF. Past experience indicating that sanding affects the safety of the train operation, would likely be reflected in the instructions given to the engineers in these manuals. The results of the review of the latest version of the manuals revealed the following:

- *NS*: No reference to sanding exists in NS–1, ''Rules of Equipment Operation and Handling.'' Discussion with the senior road foreman revealed that Norfolk Southern simply instructed locomotive engineers to use sanding to improve adhesion when wheels start to slip. The railroad does instruct engineers to back off the throttle if wheel slip continues to occur even with sanding. If the train stalls on the ruling grade, then the engineer must ask for help.
- *CSXT*: Only one section of the railroad's operating rules makes reference to sanding (excluding instructions to check for sander operation during daily inspection): 5503 Sanding Use—sand as provided below: 1. Use sand only when necessary to improve traction, which includes ''sanding the rail;'' 2. When conditions require, use sand as the train is stopping to avoid wheel slipping when starting; and 3. Use trainline sanding only when front/lead truck sanding proves inadequate. CSXT's rules also include the definition of sanding, which states: ''Sanding the Rail: A term used to describe the act of putting sand on a rail in advance of an anticipated train

movement to ensure greater adhesion when movement begins.''

• *UP*: No specific instruction exists on the circumstance and manner that sanding should be used, other than instructions to check for sanding operation during daily inspection.

• *BNSF*: Other than instructions to check for sanding operation during daily inspection, BSNF's rules include the statement, ''Apply sand as conditions warrant,'' in sections to instruct how to operate during start, going upgrade, negotiating undulating grade, and cresting grade. In the two sections where instructions are given to stop a train in a descending grade or controlling the speed using dynamic brake, the engineers must perform the following steps:

• As dynamic braking becomes ineffective near the stopping point, turn on the sand and develop enough brake cylinder pressure with the independent brake valve to prevent forward surge.

• Make a final brake pipe reduction to complete the stop with the service exhaust blowing at the stopping point.

• After stopping, move the dynamic brake controller to OFF and reduce the remote(s) DB to IDLE.

• Fully apply the independent brake and turn off the sand after the stop is completed.

Apparently, BNSF believes that the use of sanding with the independent brake at near zero speed will brake the locomotive more effectively so that a surge of the locomotives can be prevented when dynamic braking becomes ineffective. However, it is not a general practice for all railroads to operate that way.

D. Train Simulations

The AAR Train Operation and Energy Simulation (TOES) Model makes no mention of the use of sand for braking purposes. This further points to the conclusion that sanding is not considered for emergency or other braking purposes.

E. General Considerations

In the Working Group, representatives of locomotive engineers supported retention of a requirement for provision of sand to support safe and efficient operations. FRA is conscious of the fact that, unlike other safety statutes, the Locomotive Inspection law, at 49 U.S.C. 20701, requires that each locomotive be ''in proper condition'' as well as ''safe''. Railroad representatives agree that sand remains useful for adhesion in many circumstances and would not remove sanders from locomotives even if allowed to do so. These considerations argue for proceeding with caution as the regulation is revised.

Finally, it should be noted that there are a variety of situations in yard switching (where locomotives only may be relied upon for stopping a switching movement) and over the road (where it is necessary to cross a ruling grade with marginal motive power) where sand would ordinarily be relied upon. Members of the Working Group raised the possibility that a locomotive engineer might feel compelled to skirt other safeguards in order to overcome operational difficulties should sand be unavailable. This is a concern that should be factored in when determining how much latitude to provide in this rulemaking. FRA welcomes comment on this issue.

V. Current Regulatory Impediments

Relaxing the locomotive sanding requirement as proposed would maintain safety and would allow railroads to better utilize their locomotive fleets. The current requirement allows a locomotive found with a defective sander to continue in service to the next forward location where repairs can be made or the next calendar day inspection, which ever occurs first. Under the proposed requirement, a lead locomotive in an over-the-road train may continue to be utilized by the railroad for up to fourteen days; in the case of a trailing locomotive, it may continue to be utilized by the railroad until placed in a facility with a sand delivery system or departure from an initial terminal.

Sanding may reach optimal effectiveness even where one or more locomotive sanders in a consist is inoperative. Locomotives are routinely equipped with two sanders at each end. Often a consist will contain multiple locomotives. Each locomotive in a multiple-locomotive consist distributes sand to the rail. As a result, when each of the locomotives in a multiple locomotive consist are operating with all sanders operative, the train could potentially distribute more sand to the rail than it will utilize. At that point the effect of the sand on the train would be the same if one or two sanders in the consist were inoperative.

Requirements for sanders can be traced back to the steam locomotive era; at that time, sanding the rail was thought to enhance adhesion between the steam locomotive wheel and the rail. Modern diesel locomotives rely on wheel slip and wheel creep devices, as well as sand, to provide adhesion between the wheel and rail. Where sanders are inoperative on a diesel locomotive the total loss of adhesion would be less than it would have been for a steam locomotive. Notably, any reduced adhesion would limit the ability of the locomotive to pull its train. Loss of the ability to pull the train is a productivity concern that is not being addressed by this proposed rule.

Sanding the rail in braking mode provides little additional adhesion to a train, because train handling depends primarily on train brakes to maintain train dynamics. The locomotive braking has limited effect. As stated in the technical discussion above, by the time the locomotives in the consist have passed over the sanded rail, little to no sand remains on the rail and little or no benefit is provided to train braking.

VI. Section-by-Section Analysis

Proposed Amendments to 49 CFR Part 229

Section 229.5 Definitions.

FRA is proposing to add the term ''sand delivery system'' in this section. The term would mean a permanently stationed or fixed device designed to deliver sand to locomotive sand boxes that do not require the sand to be manually delivered or loaded. A sand delivery system will be considered permanently stationed if it is at a location at least five days a week for eight hours per day. FRA seeks views from interested parties regarding this definition.

FRA is also proposing to add the term ''initial terminal.'' The definition of this term would be identical to that currently contained in 49 CFR 232.5 and 238.5. The term would mean ''a location where a train is originally assembled.''

Section 229.9 Movement of non-complying locomotives.

FRA proposes to amend this section to exempt locomotives operated under proposed paragraphs 229.131(b) and (c)(1) from the movement for repair provision contained in Section 229.9. In general, Section 229.9 currently provides movement for repair requirements for part 229. Proposed paragraphs 229.131(b) and (c)(1) contain specific requirements relating to the movement and continued use of locomotives with defective sander equipment. Because the proposed paragraphs specifically address movement for repair, applying Section 229.9 would be superfluous or conflicting, and would no longer be necessary.

FRA also proposes to make a clarifying amendment to this section of part 229. Section 229.9 currently contains the following exception that reads: ''[e]xcept as provided in * * *

229.125(h)'' The exception relates to locomotive auxiliary lights and although a correct citation when originally inserted into the regulations, later amendments to that section resulted in redesignation of the paragraphs. The exception should refer to Section 229.125(g). Like Section 229.131(b) and (c)(1), Section 229.125(g) sets forth movement for repair requirements specific to that section. Consequently, FRA is proposing to make this clarification in this regulatory proceeding.

Section 229.131 Sanders.

Paragraph (a). This paragraph would establish a general requirement that locomotives be equipped with operative sanders before departing an initial terminal. Any time a locomotive is in use before leaving the initial terminal it will be required to have operative sanders. The term ''in use'' has been consistently applied to mean when a locomotive is capable of being used. Thus, the locomotive does not have to actually be used to be in use. Examples of a locomotive in use are when a locomotive has been inspected, or a locomotive is on a ready track. FRA agrees with the RSAC's recommendation that the initial terminal would be an appropriate place to initially require operative sanders, because it is a place where sander maintenance can usually be accomplished without imposing a significant burden on the railroad. In many instances, locations where trains are initiated are equipped with sand delivery systems and are capable of making repairs to the sander mechanisms. FRA notes that this proposal will permit locomotives to be released from daily locomotive inspections with inoperative sanders. However, the proposal would require sanders to be repaired or handled for repair under Section 229.9 if defective when the locomotive is preparing to depart from an initial terminal. In instances where repairs cannot be performed, a locomotive may be dispatched from an initial terminal but only under the strict provisions contained in Section 229.9. Thus, the locomotive could only continue in use to the nearest forward location where necessary repairs could be effectuated or to the locomotive's next calendar day inspection, whichever occurs first. FRA further notes that if a locomotive is at an initial terminal for its train and that location has a sand delivery system or is otherwise capable of making sander repairs, then the locomotive may not legally depart that location with inoperative sanders. FRA also intends to make clear that a locomotive's sanders will only be considered operative if appropriate amounts of sand are deposited on each rail in front of the first power operated wheel set in the direction of movement.

FRA recognizes that this proposal would be less restrictive than the movement for repair provisions currently contained in Section 229.9. In most instances, locomotives will likely encounter an initial terminal less frequently than a daily inspection. This will facilitate more efficient railroad operations. Under the current provision, a railroad will take a locomotive out of service when a sander defect is found at the daily inspection. By requiring operative sanders less frequently, the new requirement allows the railroad to keep the locomotive in service more often. With more locomotives in service, the railroad will be able to better utilize its power throughout its fleet.

Paragraph (b). This paragraph contains the proposed requirements for handling locomotives used in road service where sanders become inoperative after departure from an initial terminal. Road service would be distinguished from yard service because the type of service affects the need for sand. Locomotives performing road service will likely be in longer trains and run at higher speeds than those performing switching service. The existing definition of switching service, as it appears in Sections 229.5 and 232.5, provides background for the distinction between road service and switching service. Switching service means ''assembling cars for train movements * * * or moving rail equipment in connection with work service that does not constitute a train movement.'' Any movement that is not considered ''switching service'' would be considered ''road service.'' Therefore, any service which constitutes a ''train movement'' would be considered ''road service'' for purposes of this section. The preamble to the final rule related to part 232 (66 FR 4104, January 17, 2001) contains detailed discussion of the factors that are to be considered when determining what constitutes a ''train movement.'' *See* 66 FR 4148–49.

Paragraph (b)(1). This paragraph proposes requirements related to lead locomotives being used in road service where sanders are discovered to be inoperative after departure from an initial terminal. Once inoperative sanders are discovered on these locomotives, there are four proposed triggers that would determine how long a lead locomotive will be permitted to remain in service with inoperative sanders. The proposed triggers are: the next initial terminal; a location where it is placed in a facility with a sand delivery system; its next periodic inspection under Section 229.23; or fourteen calendar days from the date the sanders are first discovered to be inoperative, whichever occurs first.

FRA agrees with the Working Group's determination that the four triggering events will ensure that sanders are repaired in a timely fashion while providing railroads the ability to better utilize their locomotive fleets. Under the existing rule, a locomotive can move only until the next daily inspection with inoperative sanders. Utilizing four different triggers allows the railroad a greater degree of operational flexibility. Each trigger provides a logical point at which sander maintenance should and can be conducted without impacting a railroad's operation to a significant degree. The initial terminal is an appropriate place to require operative sanders for the reasons stated in paragraph 229.131(a). When a locomotive is placed in a facility that has a sand delivery system it is appropriate to require a railroad to provide sander maintenance. Placed in a facility is intended to mean actually placed on trackage with access to the sand delivery system, and not merely passing through a location with a sand delivery system on the premises. Similarly, when a locomotive is given its required periodic inspection it is expected that the location will be capable of providing repairs and additional sand to the locomotive sanders with little burden. Permitting a lead locomotive to remain in service for no longer than fourteen days is reasonable as it permits the locomotive to reach the destination of a long-distance train run, ensures timely repairs to the sanders, and is consistent with the current Canadian requirement.

Paragraph (b)(2). This paragraph proposes the requirements for handling trailing locomotives, including distributed power locomotives, that are being used in road service when sanders are discovered to be inoperative after departure from an initial terminal. Once inoperative sanders are discovered, the NPRM proposes three triggering events that will determine how long the trailing locomotive will be permitted to remain in service with inoperative sanders. The triggering events proposed in this paragraph are identical to those proposed in paragraph (b)(1) except for the elimination of the fourteen day requirement. FRA agrees with the Working Group's determination that the need to provide sand to a trailing locomotive is less critical than it is for a lead locomotive. The engineer

operating the train or locomotive consist may be more familiar with the lead locomotive than with the trailing locomotive. The engineer is likely to be operating from the lead locomotive, and thus, that locomotive is less likely to be switched out of the consist while moving over the road.

The term ''trailing locomotive,'' as used in this paragraph, specifically refers to a locomotive that is located behind the lead locomotive in a train or locomotive consist. A distributed power locomotive, as defined in Section 229.5, is a locomotive that is part of a distributed power system that provides control to a number of locomotives dispersed in a consist from command signals originating in the lead locomotive. The distributed power locomotives are also trailing locomotives because they are located behind the lead locomotive in the train. Including both the terms ''trailing locomotives'' and ''distributed power locomotives'' may add clarity by emphasizing all trailing locomotives are subject to the requirements of this paragraph. FRA seeks comment and views from interested parties regarding the relationship between these two terms and whether there is a need to use both terms in this paragraph.

Paragraph (c). This paragraph proposes requirements for handling locomotives used in switching service where sanders become inoperative. The Working Group and the full RSAC recommended that the use of sand on locomotives performing switching service should be distinguished from locomotives being used in road service as described above in paragraph (b). Included as part of the RSAC's recommendation to FRA in this area, it was requested that FRA unilaterally develop criteria for the handling of locomotives being used in switching service that experience inoperative sanders. The request specifically related to the identification of what constituted locomotives at ''outlying locations'' and the identification of the triggering events for repairing inoperative sanders on such locomotives. FRA considered the discussions and views provided by members of the Working Group when developing this proposal.

Rather than attempt to define what constitutes an ''outlying location,'' FRA believes that the most appropriate method of distinguishing between switching locomotives and the locations where they operate, is to base the determination on the existence of a sand delivery system at the location. FRA believes that locomotives being used in switching service at a location with a sand delivery system should be able to be maintained and handled for repair in a more timely manner, with less disruption to railroad operations, than locomotives being used in switching service at locations without sand delivery systems. If there is no sand delivery system at a location, then the railroad is required to send maintenance vehicles or crews to the location or is required to move the locomotive to another location to effectuate necessary repairs. This can have a significant impact on the efficiency and continuity of switching operations at certain locations. Thus, paragraphs (c)(1) and (c)(2) separate the requirements for maintaining the sanders on locomotives being used in switching service based on the presence of a sand delivery system at the location where the locomotive is being used.

Paragraph (c)(1). This paragraph proposes requirements for handling locomotives being used in switching service at locations that are not equipped with a sand delivery system. In order to remain consistent with the overall design of the proposal submitted by the RSAC, FRA believes that some operational flexibility needs to be provided to locomotives being used in switching service at locations not capable of quickly delivering sand or making necessary repairs. As noted above, the simplest way of making this determination is based on whether or not the location has a sand delivery system. FRA believes that seven days is a reasonable amount of time to permit railroads to provide necessary sander attention to a locomotive being used in switching service at a location that does not have a sand delivery system. This amount of time is consistent and within the time frame in which locomotives used in switching service will need some other type of maintenance or attention, most likely re-fueling. The seven day mark appears to be a reasonable outer-limit for the requirement. The second triggering event proposed in this paragraph is if the locomotive becomes due for its periodic inspection pursuant to Section 229.23 of this part. FRA solicits comments and views concerning the appropriateness of this proposed provision.

Paragraph (c)(2). This paragraph proposes requirements for handling locomotives used in switching service at locations equipped with a sand delivery system. FRA agrees with the opinions of the Working Group and full RSAC that sanders on these types of locomotives can be maintained with little burden on a railroad's operation as they are already at the location where sand can be delivered and effective repairs can be effectuated. Therefore, FRA accepts the RSAC's recommendation and retains the existing requirements applicable to these locomotives. Consequently, when sanders become inoperative on these locomotives they would have to be handled in accordance with the provisions contained in Section 229.9.

Paragraph (d). This paragraph is proposed in an effort to ensure that any locomotive with inoperative sanders is properly tagged under the tagging provisions contained in Section 229.9(a). As paragraphs (b) and (c)(1) provide railroads with more flexibility with regard to using a locomotive with inoperative sanders than what is currently permitted by Section 229.9, FRA wants to ensure that proper notification and records are maintained on in-service locomotives with inoperative sanders. Thus, FRA proposes to require that locomotives operating with defective sanders be tagged in accordance with the provisions contained in Section 229.9(a). This will also ensure that the individuals operating the locomotive are fully informed as to the fact that the locomotive they are operating does not have working sanders.

VII. Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

As part of the regulatory impact analysis FRA has assessed quantitative measurements of cost and benefit streams expected from the adoption of this proposed rule. For the twenty year period the estimated quantified costs are minimal. For this period the estimated quantified benefits have a PV of $70.6 million

The major benefits anticipated from implementing this proposed rule include: a reduction in the number of times locomotives have sand loaded or the number of times the sanders are made operative. This reduction

produces a reduction in injuries related to the operation of filling sand boxes on the locomotive and the employee days absent related to these injures. Finally the proposed rule would also harmonize the sander requirement with the Canadian rule by placing a fourteen day limit on service for lead locomotives in road service with inoperative sanders.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this proposal. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2005–23080.

''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a railroad business ''line-haul operation'' that has fewer than 1,500 employees and a ''switching and terminal'' establishment with fewer than 500 employees. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. See 68 FR 24891 (May 9, 2003). Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity.

For the proposed rule over 600 railroads could potentially be affected. The proposed rule would impact all locomotives except those propelled by steam power. Given this application, only railroads that operate steam locomotives exclusively, would be unaffected. For those railroads that would be affected the impact will be minimal, if any. The focus is on permitting additional flexibility in the use of locomotives with inoperative sanders. It is anticipated that the additional flexibility will produce mostly positive impacts, i.e., savings and injury reductions.

The AISE developed in connection with this NPRM concludes that this proposal would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Act requirements, FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by this proposed rule. The Agency will consider the comments and data it receives in making a decision on the small entity impact for the final rule.

Paperwork Reduction Act

The proposed rule contains one section that would change the current regulation, Section 229.131. The proposed change would not change the current information collection activity. The information collection burden associated with the proposed rule already exists under Section 229.9. OMB clearance for the current rule has been granted and no further approval is sought at this time. If new information collection issues arise in the final rule stage, FRA will seek OMB approval.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The OMB control number assigned for information collection related to this proposed rule is OMB No. 2130–0004.

Federalism Implications

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. This proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This proposed rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended the majority of this proposed rule to FRA, has as permanent members two organizations representing State and local interests: AASHTO and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this proposed rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or of any other representatives of State government. Consequently, FRA concludes that this proposed rule has no federalism implications, other than the preemption of state laws covering the subject matter of this proposed rule, which occurs by operation of law under 49 U.S.C. Section 20106 whenever FRA issues a rule or order.

Environmental Impact

FRA has evaluated this proposed regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.

* * * The following classes of FRA actions are categorically excluded: * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128,100,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $128,100,000 or more in any one year, and thus preparation of such a statement is not required.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 229

Locomotives, Railroad safety, and Sanders.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 229 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49(c), (m).

2. Section 229.5 is amended by adding alphabetically the definitions of ''initial terminal'' and ''sand delivery system'' to read as follows:

§ 229.5 Definitions.

* * * * *

Initial terminal means a location where a train is originally assembled.

* * * * *

Sand delivery system means a permanently stationed or fixed device designed to deliver sand to locomotive sand boxes that do not require the sand to be manually delivered or loaded. A sand delivery system will be considered permanently stationed if it is at a location at least five days a week for eight hours per day.

* * * * *

3. Section 229.9 is amended by revising the introductory phrase contained in paragraph (a) to read as follows:

§ 229.9 Movement of non-complying locomotives.

(a) Except as provided in paragraphs (b), (c), § 229.125(g), and § 229.131(b) and (c)(1), * * *

* * * * *

4. Section 229.131 is revised to read as follows:

§ 229.131 Sanders.

(a) Prior to departure from an initial terminal, each locomotive, except for MU locomotives, shall be equipped with operative sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement or shall be handled in accordance with the requirements contained in § 229.9.

(b) Locomotives being used in road service with sanders that become inoperative after departure from an initial terminal shall be handled in accordance with the following:

(1) Lead locomotives being used in road service that experience inoperative sanders after departure from an initial terminal may continue in service until the earliest of the following occurrences:

(i) Arrival at the next initial terminal;

(ii) Arrival at a location where it is placed in a facility with a sand delivery system;

(iii) The next periodic inspection under § 229.23; or,

(iv) Fourteen calendar days from the date the sanders are first discovered to be inoperative; and

(2) Trailing locomotives and distributed power locomotives being used in road service that experience inoperative sanders after departure from an initial terminal may continue in service until the earliest of the following occurrence:

(i) Arrival at the next initial terminal;

(ii) Arrival at a location where it is placed in a facility with a sand delivery system; or,

(iii) The next periodic inspection under § 229.23.

(c) Locomotives being used in switching service shall be equipped with operative sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement. If the sanders become inoperative, the locomotives shall be handled in accordance with the following:

(1) Locomotives being used in switching service at a location not equipped with a sand delivery system may continue in service for seven calendar days from the date the sanders are first discovered inoperative or until its next periodic inspection under § 229.23, which ever occurs first; and

(2) Locomotives being used in switching service at locations equipped with a sand delivery system shall be handled in accordance with the requirements contained in § 229.9.

(d) Locomotives being handled under the provisions contained in paragraph (b) and (c)(1) of this section shall be tagged in accordance with § 229.9(a).

Issued in Washington, DC, on February 27, 2007.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. E7–3885 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT37

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Virginia Northern Flying Squirrel (Glaucomys sabrinus fuscus) from the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or we), extended the public comment period on the proposed rule to remove the Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*), more commonly known as the West Virginia northern flying squirrel (WVNFS), on February 21, 2007 (72 FR 7852). However, we inadvertently left out the e-mail address to which the public could send comments. This document corrects that error.

DATES: The public comment period for the proposed rule published on December 19, 2006 (71 FR 75924) ends on April 23, 2007. If you previously submitted a comment through the regulations.gov Web site and did not receive an automatic confirmation that we received your comment, please either resubmit those comments or contact us. If you previously submitted a comment to us via mail, courier, or fax, you do not need to resubmit those comments as they have been incorporated into the public record and will be fully considered in the final determination. Any comments received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: You may submit comments on the proposed delisting by any one of several methods:

1. You may submit written comments and information to the Assistant Chief, Division of Endangered and Threatened Species, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035.
2. You may hand-deliver written comments to our Northeast Regional Office, at the above address.
3. You may fax your comments to 413–253–8482.
4. You may e-mail your comments to *wvnfscomments@fws.gov.*
5. You may use the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at our Northeast Regional Office.

FOR FURTHER INFORMATION CONTACT: Diane Lynch at our Northeast Regional Office (telephone: 413–253–8628) or the Field Office Supervisor, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241 (telephone: 304–636–6586).

SUPPLEMENTARY INFORMATION: On December 19, 2006, the Service published a proposed rule (71 FR 75924), under the authority of the Act, to remove the WVNFS from the Federal List of Endangered and Threatened Wildlife, due to recovery. On February 21, 2007, we published a 60-day comment period extension (72 FR 7852) to the proposed rule. However, we inadvertently left out the email address to which the public could send comments. We now correct that error.

Please see the comment period extension document (72 FR 7852) for a list of subjects for which we are seeking comments. The public comment period for the proposed rule ends on April 23, 2007.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 21, 2007.

Sara Prigan,

Fish and Wildlife Service Federal Register Liaison.

[FR Doc. 07–855 Filed 3–5–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day and 12-Month Findings on a Petition To Revise Critical Habitat for the Indiana Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day and 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 90-day and 12-month findings on a petition to revise critical habitat for the federally endangered Indiana bat (*Myotis sodalis*). We find that the petition does not present substantial scientific information indicating that revising critical habitat for the Indiana bat may be warranted. However, we have also elected to make a 12-month finding at this time.

DATES: The finding announced in this document was made on March 6, 2007. You may submit new information concerning this species or its habitat for our consideration at any time.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Bloomington Ecological Services Field Office, 620 South Walker Street, Bloomington, IN 47403–2121. New information, materials, comments, or questions concerning this species or its habitat may be submitted to us at any time.

FOR FURTHER INFORMATION CONTACT: Scott Pruitt, Field Supervisor of the Bloomington Ecological Services Field Office (see **ADDRESSES**), by telephone at (812) 334–4261, or by facsimile to (812) 334–4273. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), requires that we make a finding on whether a petition to revise critical habitat for a listed species presents substantial scientific information indicating that the revision may be warranted. Our listing regulations at 50 CFR 424.14(c)(2)(i) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and we must promptly publish our finding in the **Federal Register**.

If we find that substantial information is presented, we are required to determine how we intend to proceed with the requested revision, and shall promptly publish notice of such intention in the **Federal Register**. The Act gives us discretion in determining whether to revise critical habitat, stating that the ''Secretary may, from time-to-time thereafter as appropriate, revise such designation.''

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(c). Our

process of coming to a 90-day finding under section 4(b)(3)(D) of the Act and § 424.14(c) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. However, we have also elected to respond as if a positive 90-day finding was made, and to also render a 12-month finding at this time.

Previous Federal Action

We originally listed the Indiana bat as in danger of extinction under the Endangered Species Preservation Act of 1966 (32 FR 4001; March 11, 1967). This species is currently listed as endangered under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). We designated critical habitat for the Indiana bat on September 24, 1976 (41 FR 41914).

On October 18, 2002, we received a petition to revise critical habitat for the endangered Indiana bat from Southern Appalachian Biodiversity Project, Buckeye Forest Council, Kentucky Heartwood, Virginia Forest Watch, Brent Bowker, Shenandoah Ecosystems Defense Group, Indiana Forest Alliance, and Heartwood. The submission clearly identified itself as a petition and included the identification information of the petitioners required by 50 CFR 424.14(a). At that time, we notified the petitioners that we lacked funding to develop a 90-day finding on the petition. We also indicated that funding was not anticipated to be available until Fiscal Year 2004 or later and that we would not be able to process the petition until funding became available. On May 6, 2005, Heartwood, Southern Appalachian Biodiversity Project, Buckeye Forest Council, Kentucky Heartwood, Indiana Forest Alliance, Virginia Forest Watch, National Forest Protection Alliance, and Wild Virginia filed a complaint (*Heartwood, et al.* v *Norton, et al.* 1:05CV313-SSB-TSH, District of Southern Ohio) that cited our failure to comply with the Act's section 4 petition deadlines and that made various claims of violations under section 7 of the Act. On May 24, 2006, we reached a settlement agreement with the plaintiffs with regards to the section 4 portion of the complaint. In that settlement we agreed that we would submit to the **Federal Register** by February 28, 2007, a 90-day finding as to whether the petition presents substantial information indicating that a critical habitat revision may be warranted for Indiana bat. We also agreed that if we determined in the 90-day finding that the petition does present substantial information indicating that the petitioned action may be warranted we would submit to the **Federal Register** by December 15, 2007, a 12-month determination that would explain how the Secretary intends to proceed with the proposed revision pursuant to 16 U.S.C. 1533(b)(3)(D)(ii).

Species Information

The Indiana bat is a temperate, insectivorous, migratory bat that occurs in 20 States in the eastern half of the United States. The Indiana bat hibernates colonially in caves and mines during winter. In spring, reproductive females migrate and form maternity colonies where they bear and raise their young in wooded areas, specifically behind exfoliating bark of large, usually dead, trees. Both males and females return to hibernacula (i.e., the caves and mines where Indiana bats hibernate) in late summer or early fall to mate and enter hibernation. As of October 2006, the Service had records of extant winter populations of approximately 281 hibernacula in 19 States and 269 maternity colonies in 17 States (King 2007, pp. 2–23). The 2005 winter census estimate of the population was 457,000, which is a 15 percent increase from the 2003 estimate (King 2007, p. 24).

Analysis of Background Information Provided in the Petition

The petition includes an incomplete list of areas currently designated as Indiana bat critical habitat. Wyandotte Cave and Ray's Cave in Indiana are not, however, included on that list. We clarify that Wyandotte Cave and Ray's Cave in Indiana are currently designated as critical habitat. We assume this omission is simply an oversight on the part of the petitioners. Therefore, when the petitioners reference current critical habitat in the petition we assume that they are referring to Big Wyandotte and Ray's Caves as well as all other designated critical habitat.

In addition, the petition states that ''In the 1999 draft Indiana Bat (*Myotis sodalis*) Revised Recovery Plan the USFWS admitted that ''it is evident that these measures have not produced the desired result of the recovery of the species (USFWS 1999a).'' We reviewed our 1999 draft Recovery Plan, and while this statement does appear in that document, it does not refer to the failure of critical habitat to promote recovery. In the 1999 draft Recovery Plan, this sentence relates specifically to conservation efforts directed at protection of winter habitat of the Indiana bat (USFWS 1999, p. 19). We listed the Indiana bat as endangered due primarily to human disturbance of hibernating bats, and associated declines in populations. We also recognized that modifications to caves were a major threat. Those modifications altered the internal climates of caves, rendering them unsuitable or less suitable for hibernating bats. Early conservation efforts focused on alleviating threats to the hibernacula, but populations continued to decline. In light of these continued declines, the 1999 draft Recovery Plan recognized that we need to continue and expand restoration and conservation efforts at hibernacula and conserve the known habitats that the species uses throughout its annual cycle.

Analysis of Petitioners Assertion That Expanded Critical Habitat Is Necessary

Petitioners Assert That the Population Continues to Decline

The petition states that ''Populations of Indiana bat continue to decline despite the 1976 designation of critical habitat by the USFWS.'' The petition states that ''The current critical habitat designation for the Indiana bat is having no effect on the species' survival.''

Information in our files shows that surveys since 2001 report increases in population numbers. Indiana bat population estimates are based on surveys conducted at Indiana bat hibernacula. During the 1950s, biologists began conducting winter bat surveys at irregular intervals and recording population estimates for a limited number of Indiana bat hibernacula (Hall 1962, pp.19–26). During the 1960s and most of the 1970s, winter surveys of the largest Indiana bat populations known at that time were relatively few, and many medium-sized and large winter populations had not yet been discovered. Since the release of the original Recovery Plan in 1983 (USFWS 1983, 80 pp.), with few exceptions, regular biennial surveys have been conducted in the most populous hibernacula. Rangewide population estimates over the three most recent biennial survey periods do not show the same declining trend seen in estimates spanning 1965 through 2000. There was approximately a 4-percent increase from the 2001 estimate of 381,000 bats to the 2003 estimate of 398,000 bats, and a 15-percent increase from the 2003 estimate of 398,000 bats to the 2005 estimate of 457,000 bats (King 2007, p. 24).

The petition states ''Even in Priority 1 hibernacula (protected caves with recorded winter populations exceeding 30,000 bats) the species continues to decline.'' It is not accurate to state

categorically that populations at sites designated as critical habitat have declined. Trends at hibernacula currently designated as critical habitat have not been consistent: some have declined while others have increased. For example, the population at (Big) Wyandotte Cave in Indiana was estimated at 1,900 Indiana bats in 1974 (the last estimate prior to designation as critical habitat) and the 2005 estimate was 54,913 bats (King 2007, p. 24). In contrast, the estimate at Cave 29 (Great Scott Cave) in Missouri was 81,800 bats at the time of critical habitat designation, and the 2005 estimate was 6,450 Indiana bats (King 2007, p. 25). The same applies to hibernacula not designated as critical habitat; the populations at some individual hibernacula have remained relatively stable or increased, while others have declined. The petitioners provide no new information or evidence to suggest otherwise.

Petitioners Assert That Declines Are Linked to Activities Occurring Outside Hibernacula

The petition states that ''Research demonstrates that the pressure exerted on the survival of the Indiana bat comes from activities occurring outside of protected, wintering hibernacula, and that revision of critical habitat designations is over-due; advances in the study of Indiana bat populations (Murray et al. 1999) and the knowledge of Indiana bat summering habitat (Romme et al. 1995: Humphrey et al. 1997: and USFWS 1999a) provide for revision to the critical habitat designation without delay.''

(Note that the above quote cites Humphrey et al. 1997. However, the list of references provided with the petition does not include a citation for Humphrey et al. 1997, but does include a citation for Humphrey et al. 1977. We assume that the reference to the 1997 document in the text is a mistaken reference to the 1977 document.)

Based on our review of the literature cited we have found the petitioners' claim to be inaccurate. None of the references cited by the petitioners report on research linking declines in Indiana bat populations to activities occurring outside of the hibernacula. The Murray et al. (1999, pp. 105–112) paper reported on a study comparing mist nets and the Anabat II detector system (an ultrasonic bat detector) for surveying bat communities; the paper did not report on causes of population declines in Indiana bat populations (and, in fact, Indiana bats were infrequently encountered during this study). The other three papers contain references to population declines, but do not report on research linking declines to factors outside of hibernacula.

Romme et al. (1995, p. 1) stated: ''Although a variety of factors undoubtedly have contributed to population losses, protection of hibernacula has been a management priority. Despite this protection, population declines have continued.'' No specific research linking declines to activities outside hibernacula were cited in this paper; rather, the paper urged that factors in addition to hibernacula protection should be considered in Indiana bat conservation efforts.

Similarly, USFWS (1999a, p. 19) (which is an agency draft of a revised Indiana Bat Recovery Plan) also pointed out that the emphasis of Indiana bat conservation efforts up to that time had been hibernacula protection, and that populations continued to decline. However, the document stated that ''not all causes of Indiana bat population declines have been determined'' (USFWS 1999a, p. 15).

Humphrey et al. (1977, pp. 334–346) reported on the discovery, in Indiana in 1974, of the first known maternity colony of the Indiana bat. As this was the first known maternity colony, relatively little was known about summer habitat at that point in time. Prior to this discovery, it was not known that the Indiana bat's maternity colonies occur in trees. The authors noted that summer habitat is needed for the reproduction and survival of the Indiana bat and pointed out that the crucial events of gestation, postnatal development, and post-weaning maturation take place during this time. The authors also discussed that suitable summer habitat is destroyed by some human land uses and urged caution in managing those habitats.

Humphrey et al. (1977, p. 345) makes the observation that summer habitat does not appear to be limiting to the Indiana bat:

> Despite the problems sometimes occurring in tree roosts, one great advantage is realized. Suitable foraging habitat occurs over a vast area of the eastern United States, and the bats can roost in a nearby tree so that flying to the feeding area is not costly. This means that *M. sodalis* has much summer habitat available to it; thus a large population size and distribution are possible.

In summary, none of the information provided or references cited by the petitioners report on research that demonstrates that factors outside the hibernacula are linked to declines in populations of Indiana bats. Rather, the references suggest that conservation efforts beyond the efforts focused on hibernacula may be appropriate. While they point out that summer habitat is important to Indiana bats, the references do not provide evidence that revising critical habitat to include summer areas may be warranted.

Petitioners Assert That Designating Critical Habitat in Summer Range Is Essential for Recovery

The petitioners make multiple claims that the current critical habitat designation has failed to promote recovery of the Indiana bat, and that designation of critical habitat in the summer range of the species is needed for recovery. Specifically, the petitioners state that ''Because there is no designated critical habitat in the Indiana bat's summer range, the USFWS continues to issue incidental take statements throughout the country, allowing many Indiana bats to be killed. For example, in southern Indiana, the USFWS allowed the permanent destruction of 121 ha (299 ac) of forest habitat in an area that has the highest known concentration of Indiana bat maternity roosts in the world (USFWS 1998). If the current protections fail to protect even this important area, expanded critical habitat is necessary.''

Designation of critical habitat would not address the issue of incidental take and the killing of Indiana bats. Take prohibition is addressed under section 9 of the Act, and we evaluate and address incidental take under sections 7 and 10 of the Act. The critical habitat analysis done under section 7 does not include consideration of take of the species itself, only habitat destruction or modification.

Furthermore, the example provided by the petitioners refers to Camp Atterbury Army National Guard Training Site. Camp Atterbury provides an excellent conservation example; current efforts at this site have been very effective in conserving the Indiana bat's summer habitat. Camp Atterbury comprises 13,409 ha (33,120 ac) in portions of Bartholomew (11,397 ha) (28,151 ac), Brown (1,609 ha) (3,974 ac), and Johnson (402 ha) (993 ac) Counties, Indiana. Approximately 10,927 ha (26,990 ac) of the site is forested. In August 1997, a mist net survey of 22 sites at Camp Atterbury was conducted to determine whether Indiana bats, as well as other bat species, were present on the installation. A total of 208 bats, representing 8 species, was captured, including 13 Indiana bats. In 1998, the Service and Department of Defense (DoD) consulted on the construction and operation of a training range at this base; the Service issued a biological opinion (cited by the petitioners as USFWS 1998b) and a subsequent amendment

that allowed for the loss of 121 ha (299 ac) of habitat suitable for summering Indiana bats for the development of a training range at the base. DoD incorporated a number of conservation measures into the proposed project, including setting aside 315 ha (778 ac) for Indiana Bat Management Zones, developing a landscape-scale forest management policy for the entire base to ensure long-term conservation of Indiana bat's summer habitat, development of a permanent water source for bats, restrictions on the use of training materials potentially toxic to Indiana bats, and development of bat research and education programs on the facility. DoD has worked closely with the Service to ensure that Indiana bat summer habitat conservation efforts have continued. DoD has continued to fund monitoring of the Indiana bat population, as well as other research efforts, and this monitoring demonstrates that the facility continues to support multiple maternity colonies of Indiana bats. There is no evidence that the long-term viability of Camp Atterbury's bat population has declined as the result of military activities. In fact, consultation between DoD and the Service (under section 7 of the Act) has led to many enhancements of summer habitat that are likely improving the long-term viability of this population.

The petitioners also state: ''Because in [sic] the change in knowledge concerning the Indiana bat's summer habitat since 1996, it is necessary that the USFWS designate summer habitat for the Indiana bat.'' We assume that the reference to 1996 is a mistaken reference to 1976, which is when we designated critical habitat for the Indiana bat. It is true that we have more knowledge of summer habitat than when we designated critical habitat in 1976, but it is not a logical extension that the knowledge necessitates the designation of critical habitat on the summer range of the species. Under section 3(5)(A) of the Act, critical habitat is defined as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The petitioners do not provide information that can reliably define the features of summer habitat that are essential to the conservation of the species, or information about what special management is required, nor provide evidence that specific areas of summer habitat may be essential to the conservation of the species as a whole. As we gather additional information on summer habitat and the distribution of the Indiana bat, we are finding that the bat is widely distributed in a variety of wooded areas. We agree that summer habitat is needed by the species, and we are successfully applying our expanding knowledge in efforts to conserve summer habitat for the Indiana bat, as demonstrated by the Camp Atterbury example discussed above. The petitioners provide no new information to support their claim that current conservation efforts are failing to conserve the Indiana bat on its summer range or to suggest that critical habitat designation of summer habitat may be warranted.

Petitioners Recommendations Regarding Critical Habitat

The petitioners note that recommendations in their petition are not complete. The petitioners alternate between requesting designation of specific forested areas and designation of all suitable habitat, but their request for the revision of critical habitat for the Indiana bat includes the following sites:

(1) Areas surrounding hibernacula currently designated as critical habitat.

(2) Suitable habitat in all counties where maternity colonies or ''other summering Indiana bats'' (which we assume means males and non-reproductive females) have been found in 9 States (Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio, Tennessee, and North Carolina). In addition, the petitioners request that we designate as critical habitat all optimal summer and fall roosting and foraging habitat throughout those States.

(3) Additional specific sites, including:

Illinois: Forests surrounding all 51 roost trees discovered by Garner and Gardner in Illinois; all forested areas within Pike and Adams Counties; all or a majority of the Shawnee National Forest; all optimal and suitable habitat in Williamson and Johnson Counties; and Indiana bat habitat in the Georgetown area (along the Little Vermillion River).

Indiana: Bartholomew, Johnson, and Brown Counties, or at an absolute minimum forested land on Camp Atterbury; all forested areas and woodlots at Newport Chemical Depot and additional areas including Little Raccoon Creek; and Muddy Fork of Silver Creek watershed.

Kentucky: Federal land in Letcher and Pike Counties.

Missouri: Fort Leonard Wood; Mark Twain National Forest; and area around St. Lee's Island on the Mississippi River, in St. Genevieve and Jefferson Counties.

Pennsylvania: Allegheny National Forest.

Virginia and West Virginia: Cumberland Gap National Historic Park and George Washington and Jefferson National Forests; and the most optimal Indiana bat habitat on private land throughout Virginia.

References cited by the petitioners document the presence of Indiana bats at specific sites, but the petitioners provide neither information that can reliably define the features of summer habitat that are essential to the conservation of the species, or what special management may be necessary, nor evidence that specific areas of summer habitat may be essential to the conservation of the species as a whole. There is currently no reliable method for determining or evaluating the relative value of these areas as summer habitat for the Indiana bat.

The petitioners define ''essential'' summer habitat for the Indiana bat as an area with at least 30 percent deciduous forest cover and water within 0.97 kilometers (0.6 miles) and optimal habitat as an area with greater than 60 percent canopy cover. They further describe optimal habitat as having more than 27 trees greater than or equal to 22 centimeters (cm) (8.7 inches) in diameter per 0.4 ha (ac), and suitable habitat as having as few as one tree greater than or equal to 22 cm (8.7 in) in diameter per 0.4 ha (ac). These definitions are based on a summer habitat model developed by Romme et al. (1995, pp. 27–38) that was based on habitat parameters that had been collected across the range of the species (up to the time the model was developed). The model cited by the petitioners has not been found to be useful in predicting habitat occupancy by Indiana bats (Carter 2005, pp. 83–85). While the limiting factors of this model are unclear, the fact that the species occurs across a large range and in a variety of wooded habitats likely contributes to the difficulty of developing successful models. The petitioners also cite Gardner et al. (1990, pp. 8–9) as documenting that most maternity roost trees are found in areas with more than 80 percent canopy cover. The work by Gardner et al. (1990) was conducted only in Illinois, and was pioneering research that greatly enhanced our understanding of the summer ecology of Indiana bats. The results, however, cannot be used to

describe the characteristics of summer habitat across the range of the species because subsequent research has shown that characteristics of other occupied sites are quite different. For example, mean values of canopy cover surrounding Indiana bat maternity roost trees are highly variable among studies, ranging from less than 20 percent to 88 percent (Kurta 2005, p. 41). Yates and Muzika (2006, pp. 1245–1246) also noted that, across the range of the Indiana bat, the amount of nonforested land in occupied areas varies greatly. The best scientific information available on summer habitat suggests that the species is widely distributed in a variety of wooded habitats, ranging from highly fragmented woodlands in agricultural landscapes to extensively forested areas.

The Service has summer records of Indiana bats from 296 counties in 20 States (King 2007, pp. 2–23). In addition to the specific areas identified above, the petitioners request that the Service revise critical habitat for the species to include all suitable habitat in all counties where there are summer records of the species in 9 States (Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio, Tennessee, and North Carolina); the Service has summer records from 235 counties in those States. As previously discussed, Indiana bats summer in a wide variety of wooded habitats, and the petitioners provide no reliable method to evaluate or measure the relative value of sites or features contained therein as Indiana bat summer habitat.

Finding

We have reviewed the petition, literature cited in the petition, and information in our files. After this review and evaluation, we find the petition does not present substantial information to indicate that revision of critical habitat to include summer areas for the Indiana bat may be warranted. Nevertheless, we have elected to respond as if a positive 90-day finding has been made and also render a 12-month finding for which we have determined not to proceed with the requested revision to Indiana bat critical habitat.

Under section 3(5)(A) of the Act, in order for the Service to consider an area for designation as critical habitat, we must either conclude that a specific area within the geographical area occupied by the species, at the time it is listed, contains those physical or biological features essential to the conservation of the species and which may require special management considerations or protection, or that a specific area outside the geographical area occupied by the species at the time it is listed is essential for the conservation of the species. The petitioners do not provide information that adequately defines the features of summer habitat that are essential to the conservation of the species, or provide information about what special management may be necessary, or provide evidence that specific areas of summer habitat may be essential to the conservation of the species.

Under the statute, the petition process for revisions to critical habitat varies from that for other petitions. Under the statute were we to make a positive finding, we need only to determine how we intend to proceed with the requested revisions. We have determined that even if a 90-day finding was warranted with respect to this petition, for the reasons stated below, we are not proceeding with revision of the critical habitat. In making this finding we are exercising our discretion, provided under section 4(b)(3)(D)(ii) of the Act, with respect to revision of critical habitat.

We cannot justify exercising our discretion to revise critical habitat for the Indiana bat because considerable time and effort would be needed to conduct new analyses and complete other procedural steps that would be associated with completing this discretionary action. Such an effort would come at the expense of critical habitat designations that the Service is required to make for other species. At the present time we have a backlog of actions involving non-discretionary designations of critical habitat for approximately 33 species. These include actions that are mandated by court orders and court-approved settlement agreements, as well as actions necessary to implement the requirements of the Act pertaining to critical habitat designations. It will take us a number of years to clear this backlog, and during that time we also need to meet non-discretionary requirements to designate critical as additional species are listed. Meeting these requirements, for which we have no discretion, is a higher priority than taking discretionary actions.

Based on our need to give priority to funding the large number of outstanding non-discretionary designations and to address new designations that will be required as additional species are listed, we find that the petitioned action to revise critical habitat for the Indiana bat is not warranted. The fact that we are making this finding and exercising our discretion not to revise critical habitat for the Indiana bat does not, however, alter the protection this species and its habitat will continue to receive under the Act. Specifically, it does not alter the requirement of section 7(a)(2) of the Act that all Federal agencies must insure the actions they authorize, fund, or carry out are not likely to ''jeopardize the continued existence'' of a listed species or result in the ''destruction or adverse modification'' of critical habitat. Further, the section 9 prohibition of take of the species, which applies regardless of land ownership or whether or not within designated critical habitat, is independent of whether critical habitat is revised to include summer habitat and is unchanged by this finding.

Although we will not commence a proposed revision of critical habitat in response to this petition, we will continue to monitor the Indiana bat population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the Indiana bat across its range. We will also be considering the recommendations covered in any final revisions to the recovery plan that is now being developed. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the Indiana bat, you may submit your information or materials to the Field Supervisor, Bloomington Ecological Services Field Office (see **ADDRESSES**).

References Cited

A complete list of all references cited herein is available, upon request, from the Bloomington Ecological Services Field Office (see **ADDRESSES**).

Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Bloomington Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: February 28, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E7–3868 Filed 3–5–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 43
Tuesday, March 6, 2007

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 Marketing Service

[Doc. No. AMS–CN–07–0020; CN–07–004]

Cotton Research and Promotion Program: Determination of Whether To Conduct a Referendum Regarding 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's view, based on a review by the Agricultural Marketing Service (AMS), that it is not necessary to conduct a referendum among producers and importers on continuation of the 1990 amendments to the Cotton Research and Promotion Act (Act). The 1990 amendments require the Secretary of Agriculture, once every 5 years, to conduct a review to determine whether to hold a referendum. The two major changes to the Cotton Research and Promotion Program made by the 1990 amendments were the elimination of assessment refunds to producers and a new assessment levied on imported cotton and the cotton content of imported products. Although USDA is of the view that a referendum is not needed, it will initiate a sign-up period as required by the Act, to allow cotton producers and importers to request a referendum.

FOR FURTHER INFORMATION CONTACT: Shethir Riva, Chief, Cotton Research and Promotion Staff, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224, Telephone (202) 720–2259, Facsimile (202) 690–1718 or E-mail *Shethir.Riva@usda.gov*.

SUPPLEMENTARY INFORMATION: In July 1991, the Agricultural Marketing Service (AMS) implemented the 1990 amendments to the Cotton Research and Promotion Act (Act). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons to be determined by the Secretary who import cotton or cotton products into the United States (U.S.) and are selected by the Secretary from nominations submitted by importer organizations certified by the Secretary of Agriculture; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount the Secretary can be reimbursed for conducting a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

Results of the initial July 1991 referendum showed that of the 46,220 valid ballots received; 27,879 or 60 percent of the persons voting, favored the amendments to the Cotton Research and Promotion Order (Order), and 18,341 or 40 percent opposed the amendments. AMS developed implementing regulations for the import assessment effective August 1, 1992, the elimination of the producer refund effective September 1, 1991, and provided for importer representation on the Cotton Board effective January 1, 1993.

In 1996 and 2001, USDA issued the results of its 5-year reviews of the Cotton Research and Promotion Program. In both reviews, the Department prepared reports that described the impact of the Cotton Research and Promotion Program on the cotton industry and the views of those receiving its benefits, and in both instances, USDA announced its view not to conduct a referendum regarding the 1991 amendments to the Order (61 FR 52772 and 67 FR 1714) and subsequently held sign-up periods for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of both respective sign-up periods did not meet the criteria as established by the Act for a continuance referendum and, therefore, referenda were not conducted.

In 2006, the Department again prepared a 5-year report that described the impact of the Cotton Research and Promotion Program on the cotton industry. The review report is available upon written request to the Chief of the Cotton Research and Promotion Staff at the address provided above. Comments were solicited from all interested parties including from persons who pay the assessments as well as from organizations representing cotton producers and importers (71 FR 13808; March 17, 2006). Economic data was also reviewed in order to report on the general climate of the cotton industry. Finally, a number of independent sources of information were reviewed to help identify perspectives from outside the program including the results of independent program evaluations assessing the effects of the Cotton Research and Promotion Program activities on demand for Upland cotton, return-on-investment to cotton producers, the benefit-cost ratio to companies who import cotton products and raw cotton, and the overall rate-of-return and qualitative benefits and returns associated with the Cotton Research and Promotion Program.

The review report cited that the 1990 amendments to the Act were successfully implemented and are operating as intended. The report also noted that there is a general consensus within the cotton industry that the Cotton Research and Promotion Program and the 1990 amendments to the Act are operating as intended. Written comments, economic data, and results from independent evaluations support this conclusion. Industry comments cited examples of how the additional funding has yielded benefits by increasing the demand and consumption for cotton. Of the 15 comments received, only one commenter, who represents cotton importers, argued for a referendum on the 1990 Act amendments.

USDA found no compelling reason to conduct a referendum regarding the 1990 Act amendments to the Cotton Research and Promotion Order although some program participants support a referendum. Therefore, USDA will allow all eligible persons to request the conduct of a continuance referendum on the 1990 amendments through a sign-up period. Eligible producers and importers may sign-up to request such a referendum at the county office of the Farm Service Agency (FSA), or by mailing such a request to FSA. The

Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent referendum (July 1991), with not more than 20 percent of such request from producers in one state or importers of cotton.

Currently, procedures for the conduct of a sign-up period appear at 7 CFR 1205.10–1205.30. These procedures will be updated as appropriate prior to the beginning of the sign-up period.

Authority: 7 U.S.C. 2101–2118.

Signed: February 28, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–3828 Filed 3–5–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Request for Special Priorities Assistance.

Agency Form Number: BIS–999.

OMB Approval Number: 0694–0057.

Type of Request: Extension of a currently approved collection of information.

Burden: 600 hours.

Average Time per Response: 30 minutes.

Number of Respondents: 1,200.

Needs and Uses: The information collected on BIS–999 from defense contractors and suppliers, is required for the enforcement and administration of the Defense Production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation System Regulations.

Affected Public: Individuals or households, business or other for-profit organizations.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: March 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3875 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Defense Priorities and Allocation System.

Agency Form Number: None.

OMB Approval Number: 0694–0053.

Type of Request: Renewal of an existing collection of information.

Burden: 14,477 hours.

Average Time per Response: 1 to 31.5 minutes.

Number of Respondents: 700,000 respondents.

Needs and Uses: The record keeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person who receives a priority rated order under the implementing DPAS regulation (15 CFR part 700) must retain records for at least 3 years.

Affected Public: Individuals or households, business or other for-profit organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: March 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3876 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: License Exception, Humanitarian Donations.

Agency Form Number: None.

OMB Approval Number: 0694–0033.

Type of Request: Extension of a currently approved collection of information.

Burden: 10 hours.

Average Time per Response: 5 hours.

Number of Respondents: 2.

Needs and Uses: Section 7(g) of the EAA, as amended by the Export Administration Amendments Act of 1985 (Pub. L. 99–64), exempts from foreign policy controls exports of donations to meet basic human needs. Since the re-write of the Export Administration Regulations, an exporter is permitted to ship humanitarian goods identified in Supplement 2 to Part 740, to embargoed destinations using the new License Exception procedures. This regulation reduces the regulatory burden on the exporters by enabling them to make humanitarian donations with only minimal recordkeeping.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of

Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: March 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3877 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Advanced Technology Program (ATP).

Form Number(s): NIST–1262 and NIST–1263.

OMB Approval Number: 0693–0009.

Type of Review: Emergency.

Burden Hours: 32,000.

Number of Respondents: 800.

Average Hours per Response: 40.

Needs and Uses: The ATP is a competitive cost sharing program designed to assist United States businesses pursue high-risk, enabling technologies with the potential for significant commercial payoff and widespread benefits for the nation. The ATP provides multi-year funding through the use of cooperative agreements to single companies and to industry-led joint ventures. In order to participate, proposals must be submitted addressing the ATP selection criteria. The information is used to perform the requisite technical, business, and budgetary reviews of the proposals to determine if awards should be granted.

Affected Public: Business or other for-profit organizations, educational institutions, not-for-profit institutions, individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing, Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by March 28, 2007 to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: March 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3880 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Census Bureau

Quarterly Financial Report

ACTION: Proposed information 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 and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 7, 2007.

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 Yolando M. St. George, U.S. Census Bureau, HQ–6K181, Washington, DC 20233, Telephone (301) 763–6600.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is planning to resubmit to the Office of Management and Budget for approval, the Quarterly Financial Report (QFR) Program information collection forms. In an effort to reduce the reporting burden for the QFR, the Census Bureau has consolidated two of its forms into one and eliminated form QFR 103 (NB). The QFR forms submitted for approval are: QFR 200 (MT) which consolidates the QFR 101 (MG) and QFR 102 (TR) long forms; and QFR 201 (MG), which is the renumbered QFR 101A (MG) short form. The eliminated form, QFR 103 (NB), was a classification form used to determine the North American Industry Classification System (NAICS) industry of respondents. The QFR is now using other sources available to the Census Bureau for classification.

The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. The QFR is a principal economic indicator that also provides financial data essential to the calculation of key Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires that financial statistics of business operations be collected and published quarterly. Public Law 109–79 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 2015.

The current scope of the QFR includes corporations in the Mining, Manufacturing, Wholesale Trade, and Retail Trade sectors. The main purpose of the QFR is to provide timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. The primary public users are U.S. Governmental organizations with economic policymaking responsibilities. In turn, these organizations play a major role in providing guidance, advice, and support to the QFR Program. The primary private-sector data users are a diverse group including universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations.

II. Method of Collection

The Census Bureau will primarily use mail out/mail back survey forms to collect the QFR data discussed in this notice. Companies will be asked to respond to the survey within 25 days of the end of the quarter for which the data are being requested. Letters and/or telephone calls encouraging participation will be directed to companies in the survey sample that have not responded by the designated

time. During the third quarter of 2006, the QFR Program introduced an encrypted Internet Data Collection System (Census Taker) for optional use as a substitute for the paper form mailed to all companies. Census Taker is an electronic version of the data collection instrument. It provides improved quality with automatic data checks and is context-sensitive to assist the data provider in identifying potential reporting problems before submission, thus reducing the need for follow-up. Census Taker is completed via the Internet eliminating the need for downloading software and increasing the integrity and confidentiality of the data.

III. Data

OMB Number: 0607–0432.

Form Number: QFR 200 (MT), and QFR 201 (MG).

Type of Review: Regular review.

Affected Public: Manufacturing corporations with assets of $250 thousand or more and Mining, and Wholesale and Retail Trade corporations with assets of $50 million or more.

Estimated Number of Respondents:

Form QFR 200 (MT)—4,108 per quarter = 16,432 annually

Form QFR 201 (MG)—4,543 per quarter = 18,172 annually

Total—34,604 annually

Estimated Time per Response:

Form QFR 200 (MT)—Average hours 3.0

Form QFR 201 (MG)—Average hours 1.2

Estimated Total Annual Burden Hours: 71,000.

Estimated Total Annual Cost: $1.8 million.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 91 and 224.

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: March 1, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–3879 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand; Final Results of the Full Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 27, 2006, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on canned pineapple fruit (''CPF'') from Thailand (71 FR62994) pursuant to section 751 (c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received a case brief from respondent interested parties, Pineapple Processors' Group, Thai Food Processors' Association, Thai Pineapple Canning Industry Corp., Ltd., Malee Sampran Public Co., Ltd. (''Malee''), The Siam Agro Industry Pineapples and Others Public Co., Ltd. (''SAICO''), Great Oriental Food Products Co., Ltd., Thai Pineapple Products and Other Fruits Co. Ltd., The Tipco Foods (Thailand) PCL, Pranburi Hotei Co. Ltd., and Siam Fruit Canning (1988) Co., Ltd. (collectively, ''Respondents''). We received a rebuttal brief from the domestic interested party, Maui Pineapple Company (''Maui''). As a result of this sunset review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''*Final Results of Review*'' section of this notice.

EFFECTIVE DATE: March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Myrna Lobo, or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC, 20230; telephone: 202–482–5050, 202–482–2371, and 202–482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2006, the Department of Commerce (the ''Department'') published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on CPF, pursuant to section 751(c) of the Act. *See Canned Pineapple Fruit from Thailand: Preliminary Results of the Full Sunset Review of the Antidumping Duty Order* (''*Preliminary Results*''). In our *Preliminary Results*, we determined that revocation of the order would likely result in continuation or recurrence of dumping with a margin of 51.16 percent for SAICO, 41.74 percent for Malee, and 24.64 percent for ''all others.'' We received a case brief on behalf of Respondents. We did not receive a case brief from Maui. Maui filed a timely rebuttal brief. No hearing was requested.

Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). HTSUS 2008.20.0010 covers CPF packed in a sugar–based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice–packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive. There have been no scope rulings for the subject order.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' for *Canned Pineapple Fruit from Thailand: Final Results of the Full Sunset Review of the Antidumping Duty Order*, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated February 27, 2007 (*Final Decision Memorandum*), which is hereby adopted by this notice. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Commerce building. In addition, a complete version of the *Final Decision Memorandum* can be accessed directly on the Web at *http://*

ia.ita.doc.gov/frn. The paper copy and electronic version of the *Final Decision Memorandum* are identical in content.

Final Results of Review

Pursuant to section 751(c) of the Act, we determine that revocation of the antidumping duty order on CPF from Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Manufacturers/Exporters/ Producers	Weighted Average Margin (percent)
Siam Agro Industry Pineapple and Others Co., Ltd. (SAICO)	51.16
Malee Sampran Factory Public Co., Ltd. (Malee)	41.74
The Thai Pineapple Public Co., Ltd.(TIPCO)	Revoked [1]
Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, Dole)	Revoked [2]
Siam Food Products, Ltd. (SFP)	Revoked [3]
Kuibiri Fruit Canning Company, Ltd. (KFC)	Revoked [4]
All Others	24.64

[1] *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 69 FR 50164 (August 13, 2004).

[2] *Id.*

[3] *See Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 67 FR 76719 (August 13, 2004).

[4] *See Notice of Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 69 FR 50164 (August 13, 2004).

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results of this full sunset review in accordance with sections 751(c), 752, and 777(1)(i) of the Act.

Dated: February 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–3891 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 7, 2006, the Department of Commerce (the Department) published the preliminary results of the antidumping (AD) administrative review on carbon and alloy steel wire rod (wire rod) from Trinidad and Tobago. The period of review (POR) is October 1, 2004, through September 30, 2005. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 65077 (November 7, 2006) (*Preliminary Results*). This review covers Mittal Steel Point Lisas Limited (MSPL), manufacturer of the subject merchandise, and its affiliates Mittal Steel North America Inc. (MSNA) and Mittal Walker Wire Inc. (collectively, Mittal). Neither the petitioners nor the respondent commented on the preliminary results.

The Department has made some minor corrections to the margin program used for the preliminary results. *See Changes Since the Preliminary Results* section below. Although we have made certain changes since the preliminary results, these final results do not differ from the preliminary results. The final results are listed below in the *Final Results of Review* section.

EFFECTIVE DATE: March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Dennis McClure, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2006, the Department published the preliminary results of the administrative review of the AD order on wire rod from Trinidad and Tobago. *See Preliminary Results*, 71 FR 65077. This review covers imports of wire rod from Mittal during the POR, October 1, 2004, through September 30, 2005. We invited interested parties to comment on the *Preliminary Results*. As noted above, the Department did not receive any comments.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and, (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no

deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003. *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review*, 68 FR 64079, 64081 (November 12, 2003).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Changes Since the Preliminary Results

Subsequent to the preliminary results, we discovered some minor technical problems with the computer program we used to calculate the margin. We found that several incorrect temporary data sets were used in the preliminary calculations. For the final results, we changed the names of the following temporary data sets in the margin program to correspond to the names in the comparison market program. In the margin program, we changed the names of the weighted–average cost data set, the weighted–average comparison market data set, and the weighted–average comparison market profit and selling expense data set. Correcting these problems does not change the *de minimis* margin from the preliminary results. *See* November 7, 2006, Memorandum to the File from Case Analysts, ''Telephone Call Regarding a Technical Clarification of the Preliminary Calculation,'' a public document on file in room B–099 of the Central Records Unit (CRU). In addition, in our preliminary calculation, when we calculated the foreign unit price in dollars, we incorrectly converted the gross unit price variable, the credit expense variable, and the indirect selling expense variable, which were already reported in U.S. dollars. We have made the necessary corrections to the margin program as noted in our Final Calculation Memorandum, to the file, dated March 7, 2007, the public version of which is on file in the CRU.

Final Results of Review

As noted above, there have been no changes from the *Preliminary Results*, except for the minor clarification of temporary databases and the correction of the currency conversion error. Therefore, we are not attaching a Decision Memorandum to this **Federal Register** notice. For further details of the issues addressed in this proceeding, see the *Preliminary Results*.

As a result of this review, we find that the following weighted–average dumping margin exists for the period October 1, 2004, through September 30, 2005:

Producer/Manufacturer	Weighted–Average Margin
Mittal Steel Point Lisas Limited	0.06% (*i.e.*, *de minimis*)

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by Mittal where Mittal did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Trinidad and Tobago, entered or

withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) For Mittal no cash deposit will be required; (2) for merchandise exported by producers or exporters not covered in this review, but covered in the less–than-fair–value (LTFV) investigation, the cash deposit rate will continue to be the company–specific rate established in the final determination; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the producer of the subject merchandise for the most recent period; and (4) if neither the exporter nor the producer is a firm covered in this review or the less–than-fair–value investigation, the cash deposit rate will be 11.40 percent, the ''All Others'' rate established in the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 55788 (August 30, 2002). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–3892 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On August 31, 2006, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on oil country tubular goods (''OCTG''), other than drill pipe, from Korea for the period (''POR'') August 1, 2004 through July 31, 2005. *See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 51797 (August 31, 2006) (*Preliminary Results*). This review covers the following manufacturers/exporters: Husteel Co., Ltd. (''Husteel'') and SeAH Steel Corporation (''SeAH''). Based on our analysis of the comments received, we have made changes to the Preliminary Results. For the final dumping margins see the ''Final Results of Review'' section below.

EFFECTIVE DATE: March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, Nicholas Czajkowski, or Dara Iserson, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–0780, (202) 482–1395, or (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2006, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on OCTG from Korea. *See Preliminary Results*. Since the *Preliminary Results*, the following events have occurred. We received case briefs on October 2, 2006, and rebuttal briefs on October 10, 2006. On October 24, 2006, the Department sent a letter to the parties informing them that Domestic Interested Parties, IPSCO Tubulars, Inc., Lone Star Steel Company, and Maverick Tube Corporations (collectively, IPSCO Tubulars) as well as the Petitioner, U.S. Steel Corporation (U.S. Steel) were being provided an opportunity to submit a rebuttal brief solely in reference to a new issue raised by Respondents in their case brief. The Department received these rebuttal briefs from IPSCO Tubulars on October 30, 2006, and U.S. Steel Corporation on November 1, 2006. On December 22, 2006, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department extended the final results by 60 days to February 27, 2006. *See Notice of Extension of Time Limit for Final Results of Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, from Korea*, 71 FR 76977 (December 22, 2006).

Scope of the Antidumping Duty Order

The products covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under sub–headings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10,

7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

As a result of recent changes to the Harmonized Tariff Schedule, effective February 2, 2007, the subject merchandise is also classifiable under the following additional HTS item numbers: 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The HTSUS sub–headings are provided for convenience and customs purposes only. The written description remains dispositive of the scope of the order.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decisions Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods (''OCTG'') from Korea*, February 27, 2007 (*Issues and Decisions Memorandum*), which is hereby adopted by this notice. The *Issues and Decisions Memorandum* is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce main building and can be accessed directly at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Issues and Decisions Memorandum* are identical in content. A list of the issues addressed in the *Issues and Decisions Memorandum* is appended to this notice.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the calculations for the final dumping margin. The changes are discussed in detail in the *Issues and Decisions Memorandum* and in the *Memorandum from Dara Iserson, Case Analyst, to the File: Analysis of Husteel Corporation (''Husteel'') for the Final Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, and *Memorandum from Nicholas Czajkowski, Case Analyst, to the File: Analysis of SeaH Steel Corporation (''SeAH'') for the Final Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, dated February 27, 2007, on file in the CRU.

Final Results of Review

As a result of our review, we determine that the following weighted–average margins exist for the period August 1, 2004, through July 31, 2005:

Manufacturer/Exporter	Margin (percent)
SeAH Steel Corporation	4.73
Husteel Co., Ltd.	0.39 (*de minimis*)

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act, and 19 CFR 351.212(b). The Department calculated importer- specific duty assessment rates (or, when the importer was unknown by the respondent, customer–specific duty assessment rates) on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales observations involving each importer to the total entered value of the examined sales observations for that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediate company(ies) involved in the transaction. For a discussion of this clarification, *see Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following antidumping duty cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of OCTG from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for SeAH, the cash deposit rate will be the rate shown above, (2) since the dumping margin for Husteel is *de minimis* (less than 0.50 percent), no cash deposit will be required for Husteel, 3) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period, (4) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise, and (5) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all others rate established in the LTFV investigation, which is 12.17 percent. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561 (June 28, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Adjustments to Husteel's G&A Expense Ratio
2. Husteel's Profit and Selling Expense Ratios for Constructed Value
3. Husteel's CEP Profit
4. Treatment of Inventory Carrying Costs Incurred in Korea for U.S. Sales
5. CEP Offset to SeAH
6. Interest Expenses Associated with U.S. Selling Operations
7. G&A Expense for Further Manufacturing
8. Interest Expense for Further Manufacturing
9. Further Manufacturing Freight Expenses
10. Calculation Issues

[FR Doc. E7–3893 Filed 3–5–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Erin Begnal, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3441 or (202) 482–1442, respectively.

Initiation of Investigation

The Petition

On February 8, 2007, the Department of Commerce (''Department'') received a petition on imports of sodium hexametaphosphate (''SHMP'') from the People's Republic of China (''PRC'') filed in proper form by ICL Performance Products, LP and Innophos, Inc. (''Petitioners''). The period of investigation (''POI'') is July 1, 2006, through December 31, 2006.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioners alleged that imports of SHMP from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to materially injure an industry in the United States. The Department issued supplemental questions to Petitioners on February 12, 2007, and February 21, 2007. Petitioners filed their responses on February 16, 2007, and February 23, 2007.

Scope of Investigation

The merchandise subject to this investigation is Sodium hexametaphosphate (''SHMP''). SHMP is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating $NaPO^3$ units. SHMP has a P^2O^5 content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, HTSUS. It may also be imported as a blend or mixture under heading 3823.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service (''CAS'') has assigned the name ''Polyphosphoric Acid, Sodium Salt'' to SHMP. The CAS registry number is 68915–31–1. However, SHMP is commonly identified by CAS No. 10124–56–8 in the market. For purposes of the investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by this investigation includes SHMP in all grades, whether food grade or technical grade. The product covered by this investigation includes SHMP without regard to chain length i.e., whether regular or long chain. The product covered by this investigation includes SHMP without regard to physical form, whether glass, sheet, crushed, granule, powder, fines, or other form.

However, the product covered by this investigation does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed by an interested party described in subparagraph (C), (D), (E), (F) or (G) of section 771(9) of the Act, by or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the domestic industry, the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) if there is a large number of producers in the industry the Department may determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the ''domestic like product'' as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that SHMP constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Investigation Initiation Checklist: Sodium Hexametaphosphate from the People's Republic of China (''PRC'') at Attachment I (''Initiation Checklist''), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support representing at least 25 percent of the total production of the domestic like product, and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. Therefore, the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Initiation Checklist at Attachment I (Industry Support).

The Department finds that Petitioners filed the petition on behalf of the domestic industry because they are an interested party as defined in sections 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. See Initiation Checklist at Attachment I (Industry Support).

Export Price

Petitioners provided numerous U.S. price quotes for SHMP manufactured in the PRC and offered for sale in the United States. However, the Department notes that a number of these prices, as quoted, were prior to the POI. Therefore, the Department has only examined prices within the POI or more contemporaneous. These prices were for SHMP within the scope of this Petition, for delivery to the U.S. customer within the POI. Petitioners deducted the costs associated with exporting and delivering the product, including ocean freight and insurance charges, foreign inland freight costs, and foreign brokerage and handling from the prices. See Initiation Checklist at 6–7.

In addition, while Petitioners also calculated margins using a U.S. price based on the average unit values (''AUVs'') of imports during the POI available from the International Trade Commission for HTSUS subheading 2835.39.5000, because adequate pricing information is available using the above-detailed price quotations, the Department need not address the AUV margin calculations for this initiation, consistent with the Department's prior practice. See Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 68 FR 42686 (July 18, 2003). However, should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Normal Value

Petitioners stated that the PRC is a non-market economy (''NME'') and no determination to the contrary has been made by the Department to date. Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC. See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy (May 15, 2006). In addition, in a recent antidumping duty investigation, the Department also determined that the PRC is a NME. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners selected India as the surrogate country. Petitioners argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the PRC and is a significant producer of SHMP. Based on the information provided by Petitioners, we believe that its use of India as a surrogate country is

appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated normal values based on consumption rates for producing SHMP experienced by U.S. producers for producing SHMP in an integrated facility and a non-integrated facility. See Initiation Checklist. In accordance with section 773(c)(4) of the Act, Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioners used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, the Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly-available, non-industry specific export subsidies. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. For valuing other factors of production, Petitioners used the same sources, where appropriate, recently used in the Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 71 FR 77373 (December 26, 2006), and inflated these values to be contemporaneous with the POI where necessary.

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioners used information from the wholesale price indices (''WPI'') in India as published by the Reserve Bank of India (''RBI'') for input prices during the period preceding the POI. In addition, Petitioners made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI, as reported on the Department's Web site. See *http://ia.ita.doc.gov/exchange/index.html.*

For the normal value calculations, Petitioners derived the figures for factory overhead, selling, general and administrative expenses (''SG&A''), and profit from the financial ratios of two Indian producers of SHMP or comparable merchandise.[1] Petitioners derived these financial ratios from Gujarat Alkalies and Chemicals Ltd. for the integrated production process and from the Aditya Birla Group for the non-integrated production process.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of SHMP from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of supported export prices to the two normal values, calculated in accordance with section 773(c) of the Act, the estimated calculated dumping margins for SHMP from the PRC range from 76.69 percent to 103.62 percent. See Initiation Checklist at 9–10 for these calculations.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by the decline in customer base, market share, domestic shipments, prices and financial performance. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist at Attachment II.

Separate Rates Application

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (Separate Rates and Combination Rates Bulletin), (April 5, 2005), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf* (''Separate Rates and Combination Rates Bulletin''). The process requires the submission of a separate-rate status application. Based on our experience in processing the separate rates applications in, for example, the antidumping duty investigations of Certain Lined Paper products from India, Indonesia, and the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China, 70 FR 58374, 58379 (October 6, 2005) (''Lined Paper Initiation''), Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, 70 FR 35625, 35629 (June 21, 2005) (''Sawblades Initiation''), and Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China, 70 FR 21996, 21999 (April 28, 2005) (''Artist Canvas Initiation''). The specific requirements for submitting the separate-rates application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate rates application is due no later than May 4, 2007.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the petition. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline. Therefore, in addition, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies who manufacture and export subject merchandise to the United States, as well as to manufacturers who produce the subject merchandise for companies who were engaged in exporting subject

[1] For a description of the comparable merchandise, as described by Petitioners, see Petition at 23–24.

merchandise to the United States during the period of investigation. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rates application by the respective deadlines in order to receive consideration for separate-rate status. Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than April 4, 2007. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration's Web site, *http://ia.ita.doc.gov/ia-highlights-and-news.html.* The Department will also send the quantity and value questionnaire to those exporters identified in Exhibit AD–3 of the petition and the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin, at page 6.

Initiation of Antidumping Investigation

Based upon our examination of the petition on SHMP from the PRC, we find that this petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of SHMP from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations. See section 733(b)(1)(A) of the Act.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of SHMP from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 733(a)(2)(A)(i) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Where it is not practicable to examine all known producers/exporters of subject merchandise because of the large number of exporters or producers included in the investigation, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (*see* scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period July 1, 2006, through December 31, 2006.

Market	Total quantity	Terms of sale	Total value
United States			
1. Export Price Sales			
2.			
a. Exporter name			
b. Address			
c. Contact			
d. Phone No.			
e. Fax No.			
3. Constructed Export Price Sales			
4. Further Manufactured			
Total Sales			

Total Quantity:

• Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

• Please report all sales on the same terms (*e.g.*, free on board).

Total Value:

• All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

• Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

• Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

• Please include any sales exported by your company directly to the United States.

• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

• Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E7–3890 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801]

Solid Urea from Russia: Notice of Initiation of Antidumping Duty New–Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 6, 2007.

SUMMARY: On January 25, 2007, the Department of Commerce received a request to conduct a new–shipper review of the antidumping duty order on solid urea from Russia. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d) (2005), we are initiating an antidumping duty new–shipper review.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Minoo Hatten at (202) 482–0410 and (202) 482–1690, respectively, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1987, the Department of Commerce (the Department) published its final determination in the investigation of solid urea from the Union of Soviet Socialist Republics (Soviet Union), finding dumping margins of 68.26 percent for Soyuzpromexport, 53.23 percent for Phillip Brothers, and 68.26 as the country–wide rate (52 FR 19557). On July 14, 1987, following an affirmative injury determination by the International Trade Commission, the Department issued an antidumping duty order on solid urea from the Soviet Union. Following the break–up of the Soviet Union, the antidumping duty order on solid urea from the Soviet Union was transferred to the individual members of the Commonwealth of Independent States. See *Solid Urea from the Union of Soviet Socialist Republics; Transfer of the AD Order on Solid Urea from the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 FR 28828 (June 29, 1992). The rates established in the most recently completed administrative review for the Soviet Union (which, because there were no shipments of urea during the review period, remained the same as those found in the investigation) were applied to each new independent state, including Russia. On September 3, 1999, the Department published the final results of the first sunset review of solid urea from Russia finding likelihood of continued or recurring dumping at the rates established in the original investigation. See *Final Results of Expedited Sunset Reviews: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan*, 64 FR 48357 (September 3, 1999). On January 5, 2006, the Department published the final results of the second sunset review of solid urea from Russia finding likelihood of continued or recurring dumping at the rates established in the original investigation. See *Notice of Continuation of Antidumping Duty Orders: Solid Urea from the Russian Federation and Ukraine*, 71 FR 581 (January 5, 2006). There have been no administrative reviews since the issuance of the antidumping duty order.

On January 25, 2007, the Department received a timely request for a new–shipper review of the antidumping duty order on solid urea from Russia from MCC EuroChem (EuroChem). On January 31, 2007, EuroChem submitted additional certifications to supplement its request for a new–shipper review in response to our telephone call of the same. See memorandum to file dated January 31, 2007. EuroChem certified that it is both the producer and exporter of the subject merchandise upon which the request for a new–shipper review is based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(b)(2)(i), EuroChem certified that it did not export solid urea to the United States during the period of investigation (POI). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), EuroChem certified that, since the initiation of the investigation, it has never been affiliated with any Russian exporter or producer who exported solid urea to the United States during the POI, including those not individually examined during the investigation.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), EuroChem submitted documentation establishing the date on which EuroChem first shipped solid urea for export to the United States and the date on which the solid urea was first entered, or withdrawn from warehouse, for consumption, the volume of its first shipment, and the date of its first sale to an unaffiliated customer in the United States.

The Department conducted a query of the U.S. Customs and Border Protection (CBP) database to confirm that EuroChem's shipment of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties. The Department also corroborated EuroChem's assertion that it made no subsequent shipments to the United States by reviewing CBP data.

On February 16, 2007, the Ad Hoc Committee of Domestic Nitrogen Producers (the petitioner) submitted a letter arguing that the respondent was not eligible for a new–shipper review because the producer of the subject merchandise to be reviewed, OJSC Nevinnomysskiy Azot (Nevinka), was affiliated with the exporter and producers during the POI. The petitioner also argued that the request was incomplete because EuroChem did not also file a certification from Nevinka certifying that it never shipped subject merchandise to the United States during the POI.

Initiation of Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that EuroChem's request meets the threshold requirements for initiation of a new–

shipper review for the shipment of solid urea from Russia it produced and exported. See Memorandum to the File from Thomas Schauer, Senior Analyst, through Laurie Parkhill, Director, Office 5: New–Shipper Review Initiation Checklist, dated February 26, 2007. Also, please refer to this memorandum for our response to the arguments the petitioner raised in its February 16, 2007, letter. As we stated in that memorandum, we intend to examine these arguments in greater detail during the course of the review and, if we determine that the producer of the subject merchandise subject to the review was indeed an affiliate of the exporter or producers in the original investigation, we may rescind the new–shipper review as provided in section 751(a)(2)(B) of the Act and 19 CFR 351.214.

The period of review for this new–shipper review is July 1, 2006, through December 31, 2006. See 19 CFR 351.214(g)(1)(ii)(A). The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation and final results of this review no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new–shipper reviews. Therefore, the posting of a bond under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of subject merchandise manufactured and exported by EuroChem must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current all–others rate of 68.26 percent.

Interested parties requiring access to proprietary information in this new–shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: February 27, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–3896 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Wednesday, March 21, 2007, from 9 a.m. to 4:30 p.m. The MEPNAB is composed of six members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers across the United States and Puerto Rico, with partnerships at the State, Federal, and local levels. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to provide the board with the latest program developments including NIST Update, MEP Overview, presentations on MEP Partnerships and Program Evaluation. The agenda may change to accommodate Board business.

DATES: The meeting will convene March 21, 2007 at 9 a.m. and will adjourn at 4:30 p.m. on March 21, 2007.

ADDRESSES: The meeting will be held at the Atrium Court Hotel, 3 Research Court, Rockville, Maryland 20850. Anyone wishing to attend this meeting should contact NIST MEP by March 14, 2007. Please submit your name, time of arrival, e-mail address and phone number to Susan Hayduk no later than Monday, March 19, 2007. Ms. Hayduk's e-mail address is *susan.hayduk@nist.gov* and her phone number is (301) 975–5614.

FOR FURTHER INFORMATION CONTACT: Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–4269.

Dated: March 1, 2007.

James E. Hill,

Acting Deputy Director.

[FR Doc. E7–3874 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030107D]

Fisheries of the Gulf of Mexico; Fisheries of the South Atlantic; Southeastern Data, Assessment, and Review (SEDAR); Gulf of Mexico gag grouper; South Atlantic gag grouper; Gulf of Mexico red grouper; Public Meetings.

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

ACTION: Notice of SEDAR Workshops for Gulf of Mexico and South Atlantic gag grouper and Gulf of Mexico red grouper.

SUMMARY: The SEDAR assessments of the Gulf of Mexico stock of gag grouper, the South Atlantic stock of gag grouper, and the Gulf of Mexico stock of red grouper will receive additional scientific scrutiny through a supplemental SEDAR Review Workshop and Evaluation Workshop.

DATES: The Evaluation Workshop will take place March 19 - 22, 2007. The Review Workshop will take place May 8 - 10, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Evaluation Workshop will be held at the Southeast Fisheries Science Center, Miami Laboratory, 75 Virginia Beach Drive, Miami, FL 33149. The Review Workshop will be held in the Tampa, FL area at a location to be provided in a later notice.

FOR FURTHER INFORMATION CONTACT: John Carmichael, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR assessments are developed through an open workshop process that involves a variety of participants. Participants for SEDAR Workshops, appointed by the regional Fishery Management Councils, the Southeast Regional Office (SERO), and the Southeast Fishery Science Center (SEFSC), include data collectors and database managers; stock assessment scientists, biologists, and researchers;

constituency representatives including fishermen, environmentalists, and non-governmental organization (NGO's); International experts; and staff of Councils, Commissions, and state and Federal agencies.

Assessments of Gulf of Mexico and South Atlantic stocks of gag grouper were developed through SEDAR 10, completed in July 2006. The assessment of Gulf of Mexico red grouper was developed through SEDAR 12, completed in February 2007. It is acknowledged that methods of assessing Southeastern fish stocks and addressing issues within available datasets improve with each SEDAR assessment, and recent assessment updates have allowed incorporation of such changes. There are similarities in the data sources used to develop SEDAR 10 and 12 assessments, potential similarities in basic species biology, and considerable overlap in fisheries that harvest these species within the respective Council areas of jurisdiction. Therefore, the Steering Committee has determined that a special review of these recent grouper assessments is required to ensure that uncertainties are treated appropriately and that any potential differences in methods or data treatments are thoroughly justified.

This special inquiry will be prepared through 2 SEDAR workshops: an evaluation workshop and review workshop. The evaluation workshop will consist of SEFSC and Council appointees familiar with the assessments and the fisheries which will be convened to review the assessments and possibly recommend additional sensitivity analyses. The Review Workshop will consist of an SEFSC appointed Chair, two independent reviewers appointed through the Center for Independent Experts (CIE), and up to two additional representatives appointed by the Gulf and South Atlantic Councils. The product of the Evaluation Workshop will be a report addressing key assessment uncertainties and recommending potential additional assessment analyses for consideration by the Review panel. The product of the Review Panel will be an independent evaluation of the recommendations and conclusions of the Evaluation Panel and any subsequent assessment analyses.

SEDAR Grouper Review Schedule:

March 19 - 22, 2007: Grouper Evaluation Workshop

March 19, 2007: 1 p.m. - 6 p.m.; March 20 - 21, 2007: 8 a.m. - 6 p.m.; March 22, 2007: 8 a.m. - 12 noon.

An appointed panel will review the SEDAR 10 assessments of Gulf of Mexico and South Atlantic gag grouper and the SEDAR 12 assessment of Gulf of Mexico red grouper. Participants will evaluate key data and methodological decisions and the justifications of those decisions as provided in the SEDAR 10 and 12 assessment reports. The panel will prepare a written report addressing Terms of Reference approved by the SEDAR Steering Committee.

May 8 - 10, 2007: SEDAR Grouper Review Workshop

May 8, 2007: 1 p.m. - 6 p.m.; May 9, 2007: 8 a.m. - 6 p.m.; May 10, 2007: 8 a.m. - 1 p.m.

The Review Workshop is an independent peer review of the recommendations of the Evaluation Panel and any subsequent analyses recommended by the Evaluation Panel. Workshop Panelists will review the SEDAR 10 and 12 assessments and the findings of the Evaluation Panel and document their comments and recommendations in a Consensus Summary Report.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: March 1, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–3849 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2007–0003]

Notice of the Removal of the Paper Search Collection of Registered Word-Only Marks From Trademark Search Library in Arlington, VA

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') hereby provides sixty (60) days notice of the microfilming and removal of the paper search collection of registered marks consisting only of words from the USPTO's Trademark Search Facility in Arlington, VA. This Notice does not concern the paper search collection of registered marks that consist of or include design elements.

DATES: Removal of the paper search collection of registered word-only marks shall be effected beginning sixty (60) days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Chicoski, Office of the Commissioner for Trademarks, 571–272–8943.

SUPPLEMENTARY INFORMATION: Under 35 U.S.C. 41(i), the USPTO must maintain a collection of United States trademark applications and registrations for use by the public in paper, microform, or electronic form. The provision authorizing an electronic search collection was added by § 4804(d)(1) of the American Inventors Protection Act of 1999 (''AIPA''), Title IV, Subtitle B, of Pub. L. 106–113, 113 Stat. 1501, 1501A–589. The USPTO currently maintains a searchable electronic database of registered marks and marks in pending applications, as well as text and images of marks in abandoned, cancelled and expired records dating back to 1984. Government insignia protected by U.S. law or by Article 6ter of the Paris Convention, and insignia that various federally and state recognized Native American tribes have identified as their official tribal insignia are also included. Trademark examining attorneys have relied exclusively on the electronic search system since before 1990.

Section 4804(d)(2) of the AIPA provides that the USPTO can eliminate the paper or microform search collection only pursuant to notice and opportunity for public comment, and only after submitting a report to the Committees on the Judiciary of the Senate and the House of Representatives detailing its plan for removal, and certifying that the implementation of such plan will not negatively impact the public. On May 9, 2003, the USPTO certified to Congress that the USPTO could cease to maintain a paper search collection of marks that consist only of words, without harm to the public. The 2003 report and certification are currently available on the USPTO Web site at *http://www.uspto.gov/web/offices/com/sol/comments/epubsearch/crtpapr.pdf.*

While the 2003 report and certification remain effective, the United States subsequently entered a stipulated settlement in *National Intellectual Property Researchers Association, Inc.* v. *Rogan,* Civ. A. No. 03–808–A. Among other terms, the settlement required that the USPTO continue to maintain its paper search collection through at least January 1, 2006, to publish a **Federal Register** notice sixty (60) days prior to ceasing maintenance, and to create microform copies of all paper trademark registrations and expired trademark registrations prior to disposing of them.

In a June 23, 2006, **Federal Register** Notice, the USPTO announced that it ''has determined that a paper collection of registered word marks is no longer necessary, and has met the requirements of the AIPA with respect to their removal. All papers will be microfilmed prior to removal and the microform collection will be available to the public in the Public Search Facility at 600 Dulany Street, Alexandria, Virginia.'' 71 FR 36065, 36067 (June 23, 2006). The Notice provided that ''[b]ecause the USPTO will continue to maintain all existing word marks in non-electronic form, i.e., on microfilm, the certification requirements of AIPA § 4804(d)(2) are not applicable to such marks.'' *Id.* The Notice further indicated that the USPTO would issue a notice sixty (60) days prior to the removal of the paper collection of registered word-only marks. *Id.*

Accordingly, the USPTO hereby gives notice that beginning sixty (60) days from the date of this Notice, the USPTO will begin removing the paper collection of active and expired trademark registrations that consist only of words. All papers will be microfilmed before being discarded, and the microform collection will be available to the public in the Public Search Facility at 600 Dulany Street, Alexandria, Virginia. This will ensure that all information currently available in the paper search collection remains available to the public.

Dated: February 28, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7–3853 Filed 3–5–07; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 15 March 2007, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting.

Dated in Washington, DC, February 28, 2007.

Thomas Luebke,

AIA, Secretary.

[FR Doc. 07–1003 Filed 3–6–07; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–102-3.150, the following meeting notice is announced:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 19, 2007 and April 20, 2007.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, Pennsylvania 17013.

Time of Meeting: 8:30 a.m.–5 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant and staff and faculty; table and examine online College issues; assess resident and distance education programs, self-study techniques, assemble a working group for the concentrated review of institutional policies and a working group to address committee membership and charter issues; propose strategies and recommendations that will continue the momentum of federal accreditation success and guarantee compliance with regional accreditation standards.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Colonel Henry M. St-Pierre.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Interested persons may submit a written statement for consideration by the U.S. Army War College Subcommittee. Written statements should be no longer than two type-written pages and must address: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the U.S. Army War College Subcommittee until its next open meeting.

The Designated Federal Officer will review all timely submissions with the U.S. Army War College Subcommittee Chairperson, and ensure they are provided to members of the U.S. Army War College Subcommittee before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the U.S. Army War College Subcommittee Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the U.S. Army War College Subcommittee.

Henry M. St-Pierre,

Colonel, U.S. Army, Designated Federal Official.

[FR Doc. 07–1011 Filed 3–5–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare an Environmental Impact Statement for a Proposed Dredged Material Management Plan for Lorain Harbor, OH

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) and Public Law 102–484 Section 2834, as amended by Public Law 104–106 Section 2867, the Department of the Army hereby gives notice of intent to prepare an Environmental Impact Statement (EIS) for the subject Dredged Material Management Plan (DMMP). The Buffalo District of the U.S. Army Corps of Engineers (USACE) will be the lead agency in preparing the EIS.

The EIS will consider Federal actions associated with the development of a DMMP for the Federal harbor at Lorain in Lorain County, OH. The DMMP is a study conducted to develop a long-term (20-year) strategy for providing viable dredged material placement alternatives that would meet the needs of maintaining the Federal navigation channels at Lorain Harbor. The overall goal of the DMMP is to develop an economical and environmentally sustainable plan for maintaining channels necessary for commercial navigation at Lorain Harbor. The plan considers a range of management strategies including reduced dredging and the use of dredged material as a beneficial resource.

ADDRESSES: U.S. Army Corps of Engineers, Buffalo District, CELRB–PM–PB, 1776 Niagara Street, Buffalo, NY 14207–3199.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Hope, Project Manager, telephone (716) 879–4124, or Mr. William Butler, NEPA Coordinator, telephone: (716) 879–4268.

SUPPLEMENTARY INFORMATION: Lorain Harbor is a deep-draft commercial harbor located in Lorain County, OH that encompasses the lower three miles of the Black River and its mouth at Lake Erie. On average, the Federal channels at the harbor are dredged every two years. From 1979 through 2005, all material dredged from the harbor was determined to be unsuitable for open-lake placement. Consequently, in 1979, under the authority of Section 123 of the River and Harbor Act of 1970, USACE completed construction of a confined disposal facility (CDF) for the placement of the material. At present, the harbor's existing CDF is currently filled to approximately 90 percent of its total capacity. As a short-term measure to accommodate anticipated dredging needs in 2008 and 2010, the Corps of Engineers plans to conduct Operations and Maintenance activities that will consist of, among other things, the movement of material within the CDF to construct an interior berm within the facility in early 2007. This berm would increase the capacity of the facility to accept dredged material for another one or two dredging events. Additional berm-related work in 2009 and 2011 would extend the capacity of the facility through 2013. However, to address long-term dredging and dredged material management needs into 2014 and beyond, additional placement sites for dredged material must also be made available.

Proposed Action In accordance with USACE Engineer Regulation 1105–2–100, a DMMP is prepared for a Federal navigation project to ensure that maintenance dredging activities are performed in an environmentally acceptable manner, use sound engineering techniques, are economically warranted, and that sufficient confined disposal facilities (CDF) are available for at least the next 20 years. The proposed DMMP will focus on the management of dredged material during normal maintenance of the Federal navigation channels at Lorain Harbor, and will take into consideration non-Federal dredging projects permitted by the Buffalo District. The approved DMMP will be consistent with sound engineering practices and meet all Federal environmental compliance standards, including those established by Section 404 of the Clean Water Act. In addition, the DMMP will be consistent with State and local plans such as the Ohio Coastal Management Program and Black River Remedial Action Plan.

Reasonable Alternatives: It is Corps of Engineers planning policy to consider all practicable and relevant alternative management measures. The alternative plans considered in the DMMP will consist of an array of placement and beneficial use measures. These measures have been combined into the following alternative plans for managing dredged material at Lorain Harbor: (1) Alternative Plan 1. This plan would involve the continued open-lake placement of suitable dredged material. Based on sediment quality analysis completed in 2002 and 2005, all Outer Harbor sediments and a small portion of the lower Black River Channel sediments were approved for unconfined open-lake placement. Preliminary evaluation of 2006 sediment quality data indicates that a major portion of the Black River Channel sediments also meet Federal guidelines for unconfined open-lake placement. This plan would also involve the continued implementation of the ongoing Fill Management Plan at the harbor's existing CDF. As a result of Operations and Maintenance activities, which would consist of the construction of a series of three interior berms, additional confinement capacity would be gained to extend the useful life of the facility through 2013. In addition, planning would continue for the completion of a new CDF by 2914 that would have the capacity to confine dredged material through 2026; (2) Alternative Plan 2. Under this plan, beneficial use options for the dredged material would be implemented. Beneficial uses could include the restoration of brownfield sites, bank stabilization, habitat creation, and agricultural field development. All material dredged from the harbor could either be transported and de-watered immediately as it is removed or excavated from the existing CDF and transported to the beneficial sites(s). As with Alternative 1, dredged material management and berm-related work would continue within the CDF through 2013 to maximize its confinement capacity; (3) Alternative Plan 3. This plan is similar to Alternative Plan 2, except suitable dredged material would continue to be placed at the designated open-lake site; and (4) Alternative Plan 4. Under this plan, the Federal Government would do nothing to address the need for the future long-term placement of dredged material. At the point that the Fill Management Plan has been fully implemented (2014), no further dredging of the Federal navigation channels at Lorain Harbor would occur. With a lack of acceptable dredged material placement sites, no Federal action would be taken to address the recurring dredging needs at the harbor.

Scoping Process: The Corps of Engineers invites affected Federal, State and local agencies, affected Indian tribes, and other interested organizations and individuals to participate in development of the EIS. The Corps of Engineers anticipates conducting a public scoping meeting for this EIS. The exact date, time and location of this meeting have not yet been set. This information will be

publicized once the meeting arrangements have been made.

The Draft EIS is tentatively scheduled to be available for public review in September 2007.

The Final EIS is tentatively scheduled to be available for public review in February 2008.

Dated: February 16, 2007.

John S. Hurley,

Lieutenant Colonel, Corps of Engineers, District Commander.

[FR Doc. 07–1007 Filed 3–5–07; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF DEFENSE

Department of the Navy

Information on Surplus Land at a Military Installation Designated for Disposal: Naval Weapons Station Seal Beach Detachment, Concord, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This notice provides information on the surplus property at Naval Weapons Station Seal Beach Detachment, Concord, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Kesler, Director, Base Realignment and Closure Program Management Office, 1455 Frazee Road, San Diego, CA 92108–4310, telephone 619–532–0993; or Ms. Laura Duchnak, Director, Base Realignment and Closure Program Management Office, West, 1455 Frazee Road, San Diego, CA 92108–4310, telephone 619-532–0994.

SUPPLEMENTARY INFORMATION: In 2005, Naval Weapons Station Seal Beach Detachment, Concord, CA, was designated for closure under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the Act). Pursuant to this designation, on January 23, 2006, land and facilities at this installation were declared excess to the Department of the Navy (DON) and available to other Department of Defense components and other Federal agencies. The DON has evaluated all timely Federal requests and has made a decision on property required by the Federal Government.

Notice of Surplus Property. Pursuant to paragraph (7)(B) of Section 2905(b) of the Act, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for surplus property at Naval Weapons Station Seal Beach Detachment, Concord, CA, is published in the **Federal Register**

Redevelopment Authority. The Local Redevelopment Authority (LRA) for the Naval Weapons Station Seal Beach Detachment, Concord, CA, is the City of Concord. The point of contact is Mr. Michael Wright, Reuse Project Director, City of Concord, 1950 Parkside Drive, MS/1B, Concord, CA 94519, telephone 925–671–3019.

Surplus Property Description. The following is a list of the land and facilities at Naval Weapons Station Seal Beach Detachment, Concord, CA, that are surplus to the needs of the Federal Government.

a. *Land.* Naval Weapons Station Seal Beach Detachment, Concord, CA, consists of approximately 12,882 acres of improved and unimproved fee simple land located within Contra Costa County and the City of Concord. Excluded from this determination of surplus are two parcels of property. The first parcel is approximately 7,791 acres, including six islands. This area will be transferred to the U.S. Army. The second parcel is approximately 63 acres, including approximately 318 residential housing units. This area will be transferred to the U.S. Coast Guard.

In general, the remaining 5,028 acres of property will be available when the installation operationally closes in September 2008.

b. *Buildings.* The following is a summary of the buildings and other improvements located on the above-described land that will also be available when the installation closes. Property numbers are available on request.

(1) Administrative/Training facilities (5 structures). Comments: Approximately 10,020 square feet.

(2) Inert Storage facilities (13 structures). Comments: Approximately 125,000 square feet. Includes inert storage buildings used to store non-explosive ordnance items and materials.

(3) Paved areas (roads and surface areas). Comments: Approximately 781,519 square yards of roads and other surface areas, i.e., sidewalks, parking lots, etc., including approximately 1,642,212 square feet of airfield runway.

(4) Explosive Ordnance Magazines (217 structures). Comments: Approximately 879,000 square feet. Previously used as ammunition storage, high explosive storage, missile magazines, etc.

(5) Operational and Maintenance facilities (40 structures). Comments: Approximately 150,000 square feet. Includes test buildings, ammunition rework shops, maintenance shops, ancillary personnel support facilities, etc.

(6) Miscellaneous facilities (19 structures). Comments: Approximately 11,567 square feet, including security gatehouses, guard towers, etc.

(7) Rail facilities. Comments: Approximately 55 miles of railroad track and 41 barricaded railroad siding structures.

(8) Utility facilities. Comments: Measuring systems vary; includes gas, telephone, electric, storm drainage, water, sewer, fire protection systems, etc.

Redevelopment Planning. Pursuant to Section 2905 (b)(7)(F) of the Act, the LRA will conduct a community outreach effort with respect to the surplus property, and will publish in a newspaper of general circulation in the communities within the vicinity of Naval Weapons Station Seal Beach Detachment, Concord, CA, the time period during which the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties. This publication shall include the name, address, telephone number, and the point of contact for the LRA who can provide information on the prescribed form and contents of the notices of interest.

Dated: February 27, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–3848 Filed 3–5–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Information on Surplus Land at a Military Installation Designated for Disposal: Naval Station Pascagoula, MS

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This notice provides information on withdrawal of surplus property at Naval Station Pascagoula, MS, Sandhill Landing Housing Area.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Kesler, Director, Base Realignment and Closure Program Management Office, 1455 Frazee Road, San Diego, CA 92108–4310, telephone 619–532–0993; or Mr. James E. Anderson, Director, Base Realignment and Closure Program Management Office, Southeast, 4130 Faber Place Drive, Suite 202, North Charleston, SC 29405, telephone 843–743–2147.

SUPPLEMENTARY INFORMATION: In 2005, Naval Station Pascagoula, including the Lakeside Manor and Sandhill Landing Housing areas, was designated for closure under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the Act). On May 10, 2006, the Department of the Navy (DON) published a Notice in the **Federal Register** (71 FR 27237 and 27238) that land and facilities at this installation were declared surplus to the needs of the Federal Government. Land and facilities previously reported as surplus are now required by the Federal Government to satisfy military housing requirements in the Gulf Coast region.

Notice of Surplus Property. Pursuant to paragraph (7)(B) of Section 2905(b) of the Act, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the withdrawal of previously reported surplus property at Naval Station Pascagoula, MS, is provided.

Withdrawn Property Description. The surplus determination for the following land and facilities at Naval Station Pascagoula, MS, is withdrawn.

a. *Land.* Naval Station Pascagoula, MS, Sandhill Landing housing area consists of approximately 73 acres of improved fee simple land located within Jackson County and the City of Gautier.

b. *Buildings.* The following is a summary of the buildings and other improvements located on the above-described land that will also be withdrawn:

(1) Housing units (160 units). Comments: 94 three-bedroom townhouse apartments and 66 four-bedroom apartments.

(2) Paved areas. Comments: Approximately 16,443 square yards of roads, parking lots, sidewalks, etc.

(3) Recreational facilities include basketball and tennis courts, tot lots, picnic areas, and playgrounds. Comments: Measuring systems vary.

Dated: February 27, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–3850 Filed 3–5–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Centers for Independent Living Program—Training and Technical Assistance

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS) proposes two priorities under the Centers for Independent Living (CIL) Program—Training and Technical Assistance. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2007 and in later years. We take this action to improve the efficiency, quality of evaluation, and outcomes for individuals with significant disabilities as a result of the delivery of independent living services of the CILs and to improve the performance of Statewide Independent Living Councils (SILCs).

DATES: We must receive your comments on or before April 5, 2007.

ADDRESSES: Address all comments about these proposed priorities to Sean Barrett, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5042, Potomac Center Plaza, Washington, DC 20202–2800. If you prefer to send your comments through the Internet, use the following address: *sean.barrett@ed.gov.*

You must include the term ''IL T&TA'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Sean Barrett. *Telephone:* (202) 245–7604 or via Internet: *sean.barrett@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (866) 889–6737.

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 priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

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 priorities. 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 priorities in Room 5042, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, 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 priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Training and Technical Assistance Under the CIL Program

Under the CIL Program, the Department currently funds two training and technical assistance grants: one that supports training and technical assistance to CILs and SILCs on the issue of service delivery to young people with disabilities as they transition from school to living independently and one that provides general, comprehensive training and technical assistance to both CILs and SILCs.

The two priorities proposed in this notice would be used for competitions in which the Department would make awards to applicants to provide general, comprehensive training and technical assistance to CILs and to SILCs. Rather than requiring all applicants to demonstrate how they will meet the training and technical assistance needs of *both* CILs and SILCs, we believe that it would be a better use of funds to establish two separate priorities and award separate grants—one under the Centers for Independent Living (CILs) Training and Technical Assistance Center priority that would focus on the training and technical assistance needs of CILs and one under the Statewide Independent Living Councils (SILCs) Training and Technical Assistance Center priority that would focus on the training and technical assistance needs of SILCs. We believe that this approach would encourage applicants to address completely and comprehensively the unique training and technical assistance needs of CILs and of SILCs.

We have determined from our annual survey of CILs and SILCs, and from our ongoing monitoring and technical assistance activities, that a significant proportion of CILs and SILCs require intensive training and technical assistance on the most fundamental organizational and operational aspects of program compliance, as well as on issues related to improved performance.

The training and technical assistance needs of CILs and SILCs differ widely because their program responsibilities and challenges are distinct. We believe that conducting competitions using two separate priorities would allow both CILs and SILCs to obtain the intensive, specialized assistance they need by focusing applicants on the particular training and technical assistance needs of each.

In addition to the difference in the character of the training and technical assistance required by CILs and SILCs, there would be a significant difference in the number of CILs and SILCs receiving the training under the two priorities. Under the CILs Training and Technical Assistance Center priority, a grantee would provide training and technical assistance to over 330 CILs across the country and any eligible agencies, defined in section 726 of the Rehabilitation Act of 1973, as amended, who request training and technical assistance. The grantee under the SILC Training and Technical Assistance Center priority, on the other hand, would serve 56 SILCs. We believe that two competitions may encourage a greater number of applicants with varied experience in the operation of CILs to apply and permit us to maximize the innovative ideas, approaches and organizational strengths offered by applicants.

Priorities

Proposed Priority 1—Centers for Independent Living (CILs) Training and Technical Assistance Center

Background

Centers for independent living (CILs) are consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies that are designed and operated within a local community by individuals with disabilities and provide an array of independent living services, including the core services of information and referral, advocacy, peer support, and independent living skills building. The training and technical assistance needs of CILs are ongoing and evolve as new centers are funded, existing centers expand and change, and personnel at existing centers change.

The training and technical assistance needs of CILs are identified through CIL responses to a survey in their annual performance reports and through the Department's monitoring and technical assistance efforts. These training and technical assistance needs include needs in areas that are critical for all CILs as well as needs in areas that are center-specific.

Priority

This priority supports a CILs Training and Technical Assistance Center (CILs T&TA Center) to improve the performance of CILs by providing training and technical assistance to the CILs on the programmatic and financial aspects of their operations, including information on effective practices and proven solutions to common problems. CILs are distributed across the Nation and vary in size, stage of development, service area characteristics, and urgency of need for training and technical assistance. Therefore, the training and technical assistance provided by the CILs T&TA Center must be sensitive to this diversity and must encompass a broad range of topics.

The CILs T&TA Center must make available to all CILs a broad array of resources, training, and technical assistance. In addition, the CILs T&TA Center must address the specific needs of CILs by providing those CILs that require it with intensive, individualized, on-site training and technical assistance that meets their needs. In this regard, the CILs T&TA Center must be prepared to respond promptly to the Department's identification of particular training and technical assistance needs in general and those of particular CILs.

In coordination with the Department, the CILs T&TA Center must—

(a) Develop and provide training and technical assistance, based on the CILs' annual performance report survey and other available data, on topics related to the provision and expansion of independent living (IL) services (primarily the IL core services), fiscal and management practices, compliance with CIL standards and assurances, increased program efficiency, rigorous evaluation, and improved outcomes as measured by long-term goals and indicators;

(b) Develop and implement a plan to ensure that training and technical assistance efforts will reach all federally funded CILs and other eligible agencies;

(c) Refer CILs and eligible agencies to non-IL specific training and technical assistance available through government or non-government resources;

(d) Utilize a broad range of available, accessible technologies and methodologies to provide training and technical assistance to CILs and eligible agencies in the most effective and cost efficient manner;

(e) Provide focused, intensive and rapid training and technical assistance to CILs identified by the Department as needing, or to CILs requesting, such assistance;

(f) Identify and develop accessible training and technical assistance materials and disseminate these materials to CILs and eligible agencies; and

(g) Coordinate and collaborate with other training projects funded by the Department to ensure that training activities are complementary and non-duplicative and that dissemination activities are effective and efficient. At a minimum, the CILs T&TA Center must coordinate with any SILC Training and Technical Assistance Center funded under the Statewide Independent Living Councils (SILCs) Training and Technical Assistance Center priority.

Proposed Priority 2—Statewide Independent Living Councils (SILCs) Training and Technical Assistance Center

Background

States are required to establish a Statewide Independent Living Council (SILC) in order to receive Federal funding to support and coordinate independent living (IL) services in the State. A SILC's duties include jointly developing and signing the State Plan for Independent Living (SPIL) with the designated State unit; monitoring, reviewing, and evaluating the implementation of the SPIL; and coordinating activities with the State Rehabilitation Council and other councils addressing the needs of specific disability populations and issues under other Federal law. A majority of a SILC's members are individuals with disabilities who are not employed by a CIL or a State agency; other members include centers for independent living (CIL) representatives, State agency representatives, and other appropriate individuals.

SILC members are appointed on a rotating basis, serve in a volunteer capacity, often maintain other employment, and have widely varying experiences with disability programs. In addition, SILCs typically experience a significant amount of membership turnover. The training and technical assistance needs of SILCs are identified through SILC responses to a survey in their annual performance reports and through the Department's monitoring and technical assistance efforts. These training and technical assistance needs include needs in areas that are critical for all SILCs as well as needs in areas that are SILC specific.

Priority

This priority supports a SILCs Training and Technical Assistance Center (SILCs T&TA Center) to improve the performance of SILCs through greater access to timely and relevant training and technical assistance regarding SILC duties and operation.

In coordination with the Department, the SILCs T&TA Center must—

(a) Develop and provide training and technical assistance, based on the SILCs' annual performance report survey and other available data, on topics directly related to SILC legal responsibilities, including SILC organization and operation and the development of the SPIL;

(b) Develop and implement a plan to provide to all SILCs the training and technical assistance identified in paragraph (a) of this priority;

(c) Refer SILCs to non-IL specific training and technical assistance available through government or non-government resources;

(d) Utilize a broad range of available, accessible technologies and methodologies to provide training and technical assistance to SILCs in the most effective and cost efficient manner;

(e) Identify and develop accessible training and technical assistance materials and disseminate these materials to the SILCs;

(f) Provide technical assistance to SILCs to enhance SILC partnerships with State vocational rehabilitation agencies, CILs, and other organizations, with a focus on sharing successful operational experiences of other SILCs;

(g) Coordinate and collaborate with other training projects funded by the Department to ensure that training activities are complementary and non-duplicative and dissemination activities are effective and efficient. At a minimum, the SILCs T&TA Center must coordinate with any CILs Training and Technical Assistance Center funded under the Centers for Independent Living (CILs) Training and Technical Assistance Center priority.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities 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.

Summary of Potential Costs and Benefits

Because the Department is proposing two priorities that may be used in two competitions, rather than one, the potential for increased application costs exists for an applicant that chooses to apply for both grants under both priorities. However, both priorities share the same overall objective—improved performance in the CIL program—and applications under both priorities would likely include common elements. This may minimize any increased costs associated with the two priorities.

For an applicant that chooses to apply for only one grant, the two-priority approach would have the potential of reducing the application costs. The Department believes that the potential benefits to the CIL program from a more focused, specialized approach to training and technical assistance for CILs and SILCs would outweigh any possible increase in associated application costs.

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.

Applicable Program Regulations: 34 CFR part 366.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.132B, Independent Living Program—Training and Technical Assistance Center)

Program Authority: 29 U.S.C. 796f(b).

Dated: February 28, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–3886 Filed 3–5–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Continuing Education Programs—Community Rehabilitation Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.264B.

Dates: Applications Available: March 6, 2007.

Deadline for Transmittal of Applications: April 5, 2007.

Deadline for Intergovernmental Review: June 4, 2007.

Eligible Applicants: States and public and nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Estimated Available Funds: $1,500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Range of Awards: $475,000-$500,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 3.

Note: We are inviting applications for CFDA number 84.264B for Department of Education Regions II, IV, and X only.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program is designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed community rehabilitation program personnel throughout a multi-State geographical area.

Program Authority: 29 U.S.C. 709(a)(2) and 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 86. b) The regulations in 34 CFR parts 385 and 389.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**

Estimated Range of Awards: $475,000-$500,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 3.

Note: We are inviting applications for CFDA number 84.264B for Department of Education Regions II, IV, and X only.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public and nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* The Secretary has determined that a grantee must provide a match of at least 10 percent of the total cost of the project (34 CFR 389.40).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. *Telephone (toll free):* 1–877–433–7827. *FAX:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.264B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550.

Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: March 6, 2007.

Deadline for Transmittal of Applications: April 5, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact.*

Deadline for Intergovernmental Review: June 4, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Rehabilitation Continuing Education Programs—Community Rehabilitation Programs, CFDA Number 84.264B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Rehabilitation Continuing Education Programs-Community Rehabilitation Programs at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.264, not 84.264B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact*, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you

after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

• *Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., room 5053, Potomac Center Plaza, Washington, DC 20202–2800. *FAX:* (202) 245–6824.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.264B), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, *Attention:* (CFDA Number 84.264B),7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.264B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number including suffix letter, if any of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: In reviewing applications under this competition, the Secretary will use the selection criteria selected from 34 CFR 75.210 of EDGAR. These are listed in the application package for this competition. The Secretary also will use the selection criterion in 34 CFR 389.30(a) to evaluate applications under this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the Rehabilitation Continuing Education Programs (RCEP)—Regional Rehabilitation Continuing Education Programs (RRCEP)—Community Rehabilitation Programs is to upgrade the skills of personnel currently employed in private rehabilitation agencies and facilities that cooperate with State vocational

rehabilitation units in providing vocational rehabilitation and other rehabilitation services and personnel in centers for independent living. In order to measure the success of RRCEPs in meeting this goal, each RRCEP's cooperative agreement with the Rehabilitation Services Administration (RSA) requires the conduct of an evaluation of RRCEP training activities. Therefore, in annual performance reports RRCEPs are required to provide specific information on the number of training activities, the topics of each training program, the number of participants served, the target groups represented by participants, and summary data from participant evaluations. Performance measures established for the RRCEP are the percentage of training participants who report an increase in their knowledge, skills, and abilities and the percentage of training participants who report the training is relevant to their employment. These data allow RSA to measure results against the regional needs assessment conducted by the RRCEP and against the goal of upgrading the skills of personnel currently employed in CRPs that cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services and centers for independent living.

VII. Agency Contact

For Further Information Contact: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5053, Potomac Center Plaza, Washington, DC 20202–2800. *Telephone:* (202) 245–7429 or by e-mail: *Christine.Marschall@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 1, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–3889 Filed 3–5–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Redesign of the Rehabilitation Services Administration Rehabilitation Training Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of request for comments and recommendations on the Rehabilitation Services Administration (RSA) Rehabilitation Training Program.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services solicits comments and recommendations concerning the RSA Rehabilitation Training program.

DATES: We must receive your comments at one of the addresses provided in the **ADDRESSES** section no later than 5 p.m., Washington, DC time, on April 5, 2007.

ADDRESSES: Address all comments and recommendations to: Timothy Muzzio at the Rehabilitation Services Administration, through the Internet at the following address: *Timothy.Muzzio@ed.gov.*

You must include the term ''Comments on the RSA Rehabilitation Training Program'' in the subject line of your electronic message.

If you prefer, you may address your comments to Dr. Muzzio, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 5157, Washington, DC 20202–2800. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies.

All first-class and Priority mail sent to the Department is put through an irradiation process, which can result in lengthy delays in mail delivery. Please keep this in mind when sending your comments and please consider using commercial delivery services or e-mail in order to ensure timely delivery of your comments and recommendations.

FOR FURTHER INFORMATION CONTACT: Timothy C. Muzzio, U.S. Department of Education, 400 Maryland Ave., SW., Potomac Center Plaza, room 5052, Washington, DC 20202. Telephone (202) 245–7458. Fax: (202) 245–6824. Internet: *Timothy.Muzzio@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–5538.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments and recommendations regarding the RSA Rehabilitation Training program. We encourage you to make your comments and recommendations as specific as possible. Also, if appropriate to your comment or recommendation, please identify the specific provision in the statute authorizing the RSA Rehabilitation Training program or the particular category of training that is the subject of your comment or recommendation; identify the issue, if any, outlined elsewhere in this notice, to which your comment or recommendation pertains; clearly describe your comment or recommendation; provide a rationale supporting each recommendation; and specify how the proposed change will improve the overall program.

Please include the following with your comments and recommendations: A description of your involvement in vocational rehabilitation (VR) or the RSA Rehabilitation Training program, as well as your role, if any (*e.g.*, consumer, counselor, service provider, administrator, educator, or researcher).

During and after the comment period, you may inspect all public comments about this notice in room 5053, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, 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 Comments

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 and recommendations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The RSA Rehabilitation Training program is

authorized by title III of the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 701 *et seq.*). The RSA Rehabilitation Training program is designed to assist in increasing the numbers of, and upgrading the skills of, qualified personnel who are trained in providing vocational, medical, social, and psychological rehabilitation services.

The Secretary is authorized to award grants and contracts to pay part of the costs of projects for the following types of projects:

(1) Grants that provide training, traineeships, and related activities, including the provision of technical assistance, to assist in increasing the numbers of qualified personnel trained in providing rehabilitation services and other services provided under the Act to individuals with disabilities.

(2) Grants to train qualified interpreters to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

(3) Grants to provide technical assistance to State-designated agencies and community rehabilitation programs.

(4) Grants to provide in-service training for rehabilitation personnel, consistent with the needs identified through the comprehensive system for personnel development required by section 101(a)(7) of the Act.

The Department may provide financial assistance through six training programs:

(1) Rehabilitation Long-Term Training.

(2) Rehabilitation Continuing Education Programs.

(3) State Vocational Rehabilitation Unit In-Service Training.

(4) Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind.

(5) Rehabilitation Short-Term Training.

(6) Experimental and Innovative Training.

In fiscal year 2006, the RSA training program was funded at $38,437,740. The program allocated its funds as follows:

Rehabilitation Long-Term Training (CFDA * 84.129)	$19,653,820
Rehabilitation Continuing Education Programs (CFDA 84.264)	10,061,982
State Vocational Rehabilitation Unit In-Service Training (CFDA 84.275)	5,765,661
Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind (CFDA 84.160)	2,097,361
Rehabilitation Short-Term Training(including the Clearinghouse) (CFDA 84.246 and 84.275)	749,992
Experimental and Innovative Training (CFDA 84.263)	0
Other (required set-asides, peer review, etc)	108,924
Total	38,437,740

* CFDA: Code of Federal Domestic Assistance number.

(See the following web page for more information: *http://web99.ed.gov/GTEP/Program2.nsf*)

RSA is considering whether to redesign the RSA Rehabilitation Training program in order to—

(1) Increase the number of qualified individuals who are available to work in the State vocational rehabilitation agencies and associated programs; and

(2) Maximize the efficiency and responsiveness of programs that provide education to meet the training and education needs in the rehabilitation field.

We are interested in obtaining public input to help identify any current program needs and possible future strategies for program improvement. We are particularly interested in comments from individuals with disabilities; their parents, families, guardians, advocates, and authorized representatives; and those entities and individuals serving individuals with disabilities under the Act, including State vocational rehabilitation agencies, centers for independent living, and educators who prepare individuals who work in the vocational rehabilitation field.

We are specifically interested in comments that address the following issues:

1. The need for more vocational rehabilitation counselors and how the training authority can be used to help State agencies meet the demand for rehabilitation professionals. Specifically, we seek input on the following:

a. How to more effectively recruit individuals into the rehabilitation professions and counselor training programs and State VR agencies.

b. How to increase the capacity of training programs to produce more graduates.

c. How to improve the scholarship program to help meet national demand for rehabilitation professionals by State VR agencies.

d. How to improve the geographic availability of scholarships to students.

e. Other related issues.

2. Rehabilitation Continuing Education Programs (RCEPs) and in-service training grants to State VR agencies. These two grant programs address overlapping issues. In addition, the program funds two types of RCEPs, one type serving primarily State VR agencies and the other serving primarily community rehabilitation programs. We seek input on the following:

a. The role and effectiveness of the RCEP program in meeting the needs of State VR agencies and community rehabilitation programs for training.

b. How to improve coordination among in-service training programs.

c. The effectiveness of the in-service training program in meeting the training needs identified in the Comprehensive System of Personnel Development.

d. Other related issues.

3. The need for and recommended approaches for providing technical assistance and training to State agencies to improve program outcomes.

4. Other issues regarding the RSA Rehabilitation Training program.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 29 U.S.C. 701 *et seq.*

Dated: March 1, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–3887 Filed 3–5–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) is publishing a notice of system of records, DOE–63, ''Personal Identity Verification (PIV) Files.'' The system is created for the secure storage of information from and about applicants for a DOE PIV credential (security badge) that is issued in compliance with Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors. The

PIV information will include the PIV credential request from the applicant's sponsor, applicant's background investigation application form or verification of applicant's previous Federal suitability or access eligibility determination, copies of applicant's fingerprints, photograph, and identification documents, and investigative, adjudication, appeal, and reciprocity documentation.

DATES: The proposed new system of records will become effective without further notice, on April 20, 2007, unless in advance of that date, DOE receives adverse comments and determines that this record should not become effective on that date.

ADDRESSES: Written comments should be directed to the following address: Director, Office of Policy; HS–71/ Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290.

FOR FURTHER INFORMATION CONTACT: Abel Lopez, Director; Freedom of Information Act and Privacy Act Group, MA–74/ Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–5955; or Jack Cowden, Director, Office of Health, Safety and Security, HS–71/ Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, 301–903–4291; or Frederick Catoe, Office of the Chief Information Officer, IM–32/ Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–1090; or Isiah Smith, Office of the General Counsel, GC–77/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–8618.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974 [Title 5, United States Code (USC), Section 552a], and Office of Management and Budget (OMB) Circular A–130, ''Management of Federal Information Resources,'' DOE is publishing this notice of a new system of records pertaining to the personal identity verification (PIV) of those applying for PIV credentials that meet the Federal agency identity credential requirements.

On August 27, 2004, the President signed HSPD–12, Policy for a Common Identification Standard for Federal Employees and Contractors. This Directive established a Government-wide policy that mandated secure and reliable forms of identification to be issued by the Federal Government to its employees and its contractor employees. To implement this policy, Federal Information Processing Standards Publication 201 (FIPS Pub 201), Personal Identity Verification (PIV) of Federal Employees and Contractors, was issued in March 2006, and defined a reliable Government-wide PIV system for use in controlling access to Federal facilities. OMB subsequently clarified implementation of HSPD–12 and FIPS Pub 201 in OMB Memo 05–24, Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors, August 5, 2005. On November 22, 2005, DOE issued DOE Notice 206.3, Personal Identity Verification, which provides specific direction to DOE elements for implementing the requirements of HSPD–12 and FIPS Pub 201.

PIV information and records collected to determine eligibility for the PIV credential will be maintained in DOE–63 and will be retrieved by the applicant's name or a unique number associated with the applicant. The PIV information includes the applicant's name, Social Security number, date of birth, place of birth, signature, status as Federal or contractor employee or prospective employee, and sponsor's or employer's name, address, and telephone number. The records are the PIV credential request submitted by the applicant's sponsor and may include any of the following: copies of identity source documents; data from source documents used to positively identify the individual; copies of applicant's photograph; copies of the applicant's background investigation forms [e.g., Standard Form 85 (SF 85), Questionnaire for Non-Sensitive Positions; SF 85P, Questionnaire for Public Trust Positions; SF 86, Questionnaire for National Security Positions; SF 87, Fingerprint Chart; FD–258, Fingerprint Card; Optional Form 306 (OF 306), Declaration for Federal Employment; SF 171, Application for Federal Employment; OF 612, Optional Application for Federal Employment]; a resume´ or similar document; background investigation reports; adjudication documents; verification of previous adjudication decision by DOE or another Federal agency; disposition of applicant's PIV processing; correspondence and related documents to and from other Federal agencies for reciprocity purposes; and appeal documents. The above information will be used to positively identify individuals and determine the eligibility of those individuals for access to DOE facilities in accordance with HSPD–12.

The PIV process involves the following offices/locations: DOE Headquarters; Ames Site Office; Ames Laboratory; Argonne Site Office; Argonne National Laboratory; Berkeley Site Office; Bonneville Power Administration; Brookhaven Site Office; Brookhaven National Laboratory; Carlsbad Field Office; Chicago Office; Environmental Management Consolidated Business Center; Fermi Site Office; Fermi National Accelerator Laboratory; General Atomics; Golden Field Office; Grand Junction Office; Idaho National Laboratory; Lawrence Berkeley National Laboratory; National Energy Technology Laboratory-ARC; National Energy Technology Laboratory-Fairbanks; National Energy Technology Laboratory-Morgantown; National Energy Technology Laboratory-Pittsburgh; National Energy Technology Laboratory-Tulsa; National Renewable Energy Laboratory Area Office; National Nuclear Security Administration Service Center; Oak Ridge Institute of Science and Education; Oak Ridge National Laboratory; Oak Ridge Office; Ohio Field Office; Pacific Northwest Site Office; Pacific Northwest National Laboratory; Portsmouth/Paducah Project Office; Princeton Plasma Physics Laboratory; Princeton Site Office; Richland Operations Office; Savannah River Office; Savannah River Site Office; Southeastern Power Administration; Stanford Linear Accelerator Center; Stanford Site Office; Strategic Petroleum Reserve Project Management Office; Thomas Jefferson National Accelerator Facility; Thomas Jefferson Site Office; Western Area Power Administration.

DOE is submitting the report required by OMB Circular A–130 concurrently with the publication of this notice. The text of this notice contains the information required by the Privacy Act of 1974 [5 U.S.C. 552a(e)(4)].

Issued in Washington, DC on February 28, 2007.

Ingrid A. C. Kolb,

Director, Office of Management.

DOE–63

SYSTEM NAME:

Personal Identity Verification (PIV) Files/

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATIONS/OFFICES:

U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585

U.S. Department of Energy, Ames Site Office, 9800 S. Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Ames Laboratory, 311 TASF, Ames, IA 50011–3020

U.S. Department of Energy, Argonne Site Office, 9800 S. Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Berkeley Site Office, 1 Cyclotron Road, Berkeley, CA 94720

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621

U.S. Department of Energy, Brookhaven Site Office, 53 Bell Avenue, Building 464, Upton, NY 11973

U.S. Department of Energy, Brookhaven National Laboratory, P.O. Box 5000, Upton, NY 11973–5000

U.S. Department of Energy, Carlsbad Field Office, WIPP Information Center, 4021 National Parks Highway Carlsbad, NM 88221

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Environmental Management Consolidated Business Center, 250 E. 5th Street, Suite 500, Cincinnati, OH 45202

U.S. Department of Energy, Fermi National Accelerator Laboratory, P.O. Box 500, Batavia, IL 60510–0500

U.S. Department of Energy, Fermi Site Office, P.O. Box 2000, Batavia, IL 60510–0500

U.S. Department of Energy, General Atomics, 3550 General Atomics Court, San Diego, CA 92121

U.S. Department of Energy, Golden Field Office, Mail Stop 1501, 1617 Cole Boulevard, Golden, Colorado 80401

U.S. Department of Energy, Grand Junction Office, 2597 B 3/4 Road, Grand Junction, CO 81503

U.S. Department of Energy, Idaho National Laboratory, PO Box 1625, Idaho Falls, ID 83415

U.S. Department of Energy, Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley, CA 94720

U.S. Department of Energy, National Energy Technology Laboratory-ARC, 1450 Queen Avenue SW, Albany, OR 97321

U.S. Department of Energy, National Energy Technology Laboratory-Fairbanks, 2175 University Avenue South, Suite 201, Fairbanks, AK 99709

U.S. Department of Energy, National Energy Technology Laboratory-Morgantown, 3610 Collins Ferry Road P.O. Box 880 Morgantown, WV 26507–0880

U.S. Department of Energy, National Energy Technology Laboratory-Pittsburgh, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940

U.S. Department of Energy, National Energy Technology Laboratory-Tulsa, One West Third Street, Suite 1400 Tulsa, OK 74103–3519

U.S. Department of Energy, National Nuclear Security Administration Service Center, P.O. Box 5400, Albuquerque, NM 87185–5400

U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden, CO 80401

U.S. Department of Energy, Oak Ridge Institute of Science and Education, 130 Badger Avenue, Oak Ridge, TN 37831

U.S. Department of Energy, Oak Ridge National Laboratory, P.O. Box 2008,Oak Ridge, TN 37831

U.S. Department of Energy, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831

U.S. Department of Energy, Ohio Field Office, 175 Tri-County Parkway, Springdale, Ohio 45246–3222

U.S. Department of Energy, Pacific Northwest National Laboratory, P.O. Box 999, K1–46, Richland, WA 99352

U.S. Department of Energy, Pacific Northwest Site Office, P.O. Box 350, MS K 8–50, Richland, WA 99354

U.S. Department of Energy, Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513

U.S. Department of Energy, Princeton Plasma Physics Laboratory, P.O. Box 451, Princeton, NJ 08543

U.S. Department of Energy, Princeton Site Office, P.O. Box 102, Princeton, NJ 08042

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802

U.S. Department of Energy, Savannah River Site Office, P.O. Box A, Aiken, SC 29801

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens TechRoad, Elberton, GA 30635–4578

U.S. Department of Energy, Stanford Linear Accelerator Center, 2575 Sand Hill Road, MS 75, Menlo Park, CA 94025

U.S. Department of Energy, Stanford Site Office, 2575 Sand Hill Road, MS 8–A Menlo Park, CA 94025

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East New Orleans, LA 70123–3401

U.S. Department of Energy, Thomas Jefferson National Accelerator Facility, 12000 Jefferson Avenue, Newport News, VA 23606

U.S. Department of Energy, Thomas Jefferson Site Office, 12000 Jefferson Avenue, Newport News, VA 23606

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for a Department of Energy (DOE) PIV credential under the PIV process.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained in this system of records include all documents submitted during application for the PIV credential or copies of those documents, and any resulting investigative, adjudicative, appeal, or reciprocity documentation. The PIV information contained in the records includes the applicant's name, social security number, date of birth, place of birth, signature, status as Federal or contractor employee or prospective employee, and sponsor's or employer's name, address, and telephone number. The records are the PIV credential request submitted by the applicant's sponsor and may include depending on the applicant's history and actions any of the following: copies of identity source documents; data from source documents used to positively identify the applicant; copies of applicant's photograph; copies of the applicant's background investigation forms [e.g., Standard Form 85 (SF 85), Questionnaire for Non-Sensitive Positions; SF 85P, Questionnaire for Public Trust Positions; SF 86, Questionnaire for National Security Positions; SF 87, Fingerprint Chart; FD–258, Fingerprint Card; Optional Form 306 (OF 306), Declaration for Federal Employment; SF 171, Application for Federal Employment; OF 612, Optional Application for Federal Employment; a resume´ or similar document]; adjudication documents; verification of previous adjudication decision by DOE or another Federal agency; disposition of applicant's PIV processing; correspondence and related documents to and from other Federal agencies for reciprocity purposes; and appeal documents. The above information will be used to positively identify individuals and determine the eligibility of those individuals for access to DOE facilities in accordance with HSPD–12.

Note: Executive Order 10450 Section 9(c) stipulates that reports and other investigative material and information that originated from the background investigation (BI) will remain the property of the investigative agency that conducted the investigation. DOE Privacy Act Officers will forward requests for BI results to the agency that conducted the

investigation. The requester will be notified of the referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 et seq., 50 U.S.C. 2401 et seq., 5 U.S.C. 552a (the Privacy Act of 1974), Homeland Security Presidential Directive 12, ''Policy for a Common Identification Standard for Federal Employees Contractors,'' August 27, 2004, and Title 5, Code of Federal Regulation, Parts 5 and 736.

PURPOSES:

The records are maintained and used by DOE to determine the eligibility of individuals for a PIV credential that provides access to DOE owned or leased facilities in accordance with HSPD–12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record from this system may be disclosed as a routine use:

1. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to a (1) person representing DOE in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. To the Department of Justice when: (a) DOE or any component thereof; or (b) any employee of DOE in his or her official capacity; or (c) any employee of DOE in his or her individual capacity where DOE or the Department of Justice has agreed to represent the employee; or (d) the Federal Government, is a party to litigation or has an interest in such litigation, and after careful review, DOE determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by DOE to be for a purpose compatible with the purpose for which DOE collected the records.

3. To a court or adjudicative body in a proceeding when: (a) DOE or any component thereof; (b) any employee of DOE in his or her official capacity; (c) any employee of DOE in his or her individual capacity where DOE or the Department of Justice has agreed to represent the employee; or (d) the Federal Government is a party to litigation or has an interest in such litigation and, after careful review, DOE determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by DOE to be for a purpose that is compatible with the purpose for which DOE collected the records.

4. To a Federal, State, local, foreign, tribal, or other public authority that the system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within DOE or to another Federal agency for criminal, civil, administrative personnel or regulatory action.

5. Except for self-admissions of illegal use of drugs or drug activity on questionnaire Forms SF 85, SF 85P, and SF 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

6. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. The member of Congress must provide a copy of the constituent's request for assistance.

7. To DOE contractors in the performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. To the National Archives and Records Administration for records management inspections under 44 U.S.C. 2904 and 2906.

9. To any source or potential source from which the information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

10. To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.

11. To notify another Federal agency, or verify whether, a PIV credential is no longer valid.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper files and/or electronic media.

RETRIEVABILITY:

Records may be retrieved by name, Social Security number, or unique PIV file number.

SAFEGUARDS:

Paper records, when not in use, are maintained in a combination-locked cabinet or safe, or in an equally secure area. Electronic records are controlled through established DOE cyber security directives or procedures, and they are password protected. Both paper and electronic records are protected by screening the personnel who have regular access to them and by physically protecting the locations where they are kept. Access to paper or electronic records is limited to those whose official duties require access to the records and who have a need-to-know. Data from the system of records that is personally identifiable information which may be electronically transmitted is protected by encryption.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are in the National Archives and Records Administration (NARA) General Records Schedule and in supplemental DOE record schedules that have been approved by NARA.

SYSTEM MANAGERS AND ADDRESSES:

Headquarters: Director, Office of Security and Safety Performance Assurance, U.S. Department of Energy, SP–1/Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers of the System Locations listed with their addresses above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act at Title 10, Code of Federal Regulations (CFR), Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information Act and Privacy Act Group, MA–74/ Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or to the Privacy Act Officer at the appropriate location identified under System Locations above. For records maintained in the field including, but not limited to, Laboratories, Area Offices, or Site Offices, the request should be directed to the Privacy Act Officer that has jurisdiction over that office or facility. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation at 10 CFR1008, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Documents completed or furnished by the applicant; Department of Energy; Office of Personnel Management; Federal Bureau of Investigation; other Federal agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–3836 Filed 3–5–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8293–8]

Proposed Agreement Regarding Site Costs, Site Access, Property Use Restrictions, and Covenants Not To Sue for the Beaver Wood Product Site, Flathead County, MT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of the proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h) between the U.S. Environmental Protection Agency (''EPA'') and Beaver Wood Products Incorporated, Loretta Grosswiler, and Richard Grosswiler (''Beaver Wood Products'') (collectively, ''Settling Parties''). Settling Parties consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms. In return, Settling Parties will receive Covenants Not to Sue from EPA. EPA has incurred response costs at the Site in an amount totaling $5,299,434.69. The EPA alleges that the Settling Parties are a responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at or in connection with the Site. EPA has reviewed the Financial Information submitted to determine whether Settling Parties are financially able to pay Site response costs. Based upon this Financial Information, EPA has determined that Settling Parties have no current financial ability to pay for response costs incurred and to be incurred at the Site. However, if the future Net Sales Proceeds for Transfer of all or any portion of the Site Property equal or exceed $482,000.00, Settling Parties shall pay to EPA 65% of all Net Sales Proceeds equaling or exceeding $482,000.00. Additionally, within 90 days after closing on the Transfer of the Property, and if Settling Parties are in compliance with all requirements of this Agreement, EPA shall file a Release of Notice of Federal Lien on the Site Property. Further, Settling Parties agree to provide access to the Site and to any other property owned or controlled by Settling Parties for the purpose of conducting any necessary Site activity. Settling Parties shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the Site response. Such restrictions are defined as Land Use Restrictions and are included as an Appendix to this Agreement. Settling Parties agree to fulfill all Notice and Recording requirements. Within 45 days of entry of this Agreement, Settling Parties shall execute and record the Land Use Restrictions in the Office of the Clerk and Recorder of Flathead County, Montana and within 30 days of recording the Land Use Restrictions, Settling Parties shall provide EPA with a certified copy of the original recorded Land Use Restrictions, showing the clerk's recording stamps. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations. This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties. Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

DATES: Comments must be submitted on or before April 5, 2007. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

ADDRESSES: The Agency's response to any comments, the proposed agreement and additional background information relating to the agreement is available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, Denver, Colorado. Comments and requests for a copy of the proposed agreement should be addressed to Michael Rudy, Enforcement Specialist, Environmental Protection Agency—Region 8, Mail Code 8ENF–RC, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the Beaver Wood Products Site, Flathead County, Montana.

FOR FURTHER INFORMATION CONTACT: Michael Rudy, Enforcement Specialist, Environmental Protection Agency—Region 8, Mail Code 8ENF–RC, at the above address, (303) 312–6332.

Dated: February 26, 2007.

Sharon L. Kercher,

Director, Technical Enforcement Program, Office of Enforcement, Compliance, and Environmental Justice, Region 8.

[FR Doc. E7–3941 Filed 3–5–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8283–4]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Star Lake Canal Superfund Site, with the Calabrian Corporation.

The settlement requires the settling parties to pay a total of $20,000 as payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42, U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before April 5, 2007.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Lydia Johnson, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–8419. Comments should reference the Star Lake Canal Superfund Site, Jefferson County, Texas, and EPA Docket Number 06–03–07, and should be addressed to Lydia Johnson at the address listed above.

FOR FURTHER INFORMATION CONTACT: Edwin Quinones, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8035.

Dated: February 9, 2007.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E7–3881 Filed 3–5–07; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 8, 2007, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- February 8, 2007 (Open)

B. New Business

- FCA Bookletter BL–043—Revised Guidance on Farm Credit Bank and Association Nominating Committees

C. Reports

- FCSBA Quarterly Report

Dated: March 2, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 07–1057 Filed 3–2–07; 11:25 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Banner Corporation, Walla Walla, Washington; to merge with San Juan Financial Holding Company, and thereby indirectly acquire Islanders Bank, both of Friday Harbor, Washington.

2. Franklin Resources, Inc., San Mateo, California; to acquire 8.11 percent of the voting shares of Coast Financial Holdings, Inc., and thereby

indirectly acquire voting shares of Coast Bank of Florida, both of Bradenton, Florida.

3. Wells Fargo & Company, San Francisco, California; to merge with Placer Sierra Bancshares, Sacramento, California, and thereby indirectly acquire Placer Sierra Bank, Auburn, California.

Board of Governors of the Federal Reserve System, March 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–3838 Filed 3–5–07; 8:45 am]

BILLING CODE 6210–01–S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, April 15, 2007, through Wednesday, April 18, 2007 in Denver, Colorado. The sessions will take place from 8 a.m. to 5 p.m. on Sunday through Tuesday, and 8 a.m. to 12 noon on Wednesday. The meeting will be held at the Adam's Mark Hotel, 1550 Court Place, Denver, Colorado. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The sleeping rooms available at the Adam's Mark Hotel will be at the Government rate of $127.00 (plus applicable state and local taxes, currently 14.85%) a night for a single or double. The Adam's Mark Hotel is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

William H. Turri,

Acting, Public Printer of the United States.

[FR Doc. 07–1012 Filed 3–5–07; 8:45 am]

BILLING CODE 1520–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of Public Health and Science, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP), will hold its twelfth meeting. The meeting will be open to the public.

DATES: The meeting will be held on Thursday, March 29, 2007 from 8:30 a.m. until 5:15 p.m. and Friday, March 30, 2007 from 8:30 a.m. until 4 p.m.

ADDRESSES: The Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204. Phone: (703) 521–1900.

FOR FURTHER INFORMATION CONTACT: Bernard Schwetz, D.V.M., PhD, Director, Office for Human Research Protections (OHRP), or Catherine Slatinshek, Executive Director, Secretary's Advisory Committee on Human Research Protections; Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; (240) 453–8139; *fax:* (240) 453–6909; *e-mail address: sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On March 29, 2007, SACHRP will receive and discuss updated information and a report from the Subpart A Subcommittee and issues involving the application of subpart A of 45 CFR part 46 in the current research environment. This subcommittee was established by SACHRP at its October 4–5, 2004 meeting. The Committee will receive a report and task list from the newly formed Subcommittee on Issues Impacting those with Impaired Decision-Making Capacity. This subcommittee was formed as a result of discussions during the July 31–August 1, 2006 SACHRP meeting. In addition, the Committee will hear presentations from panelists who will examine issues related to the inclusion of subjects who are unable or have limited ability to provide informed consent to participate in research.

On March 30, 2007, the Committee will receive presentations and hear discussions from representatives of a panel that will examine conflict of interest issues and institutional policies that address conflict of interest as it pertains to IRB review. The Committee will also hear presentations from panelists on topics pertaining to investigator responsibilities and certification, and whether new or expanded guidance should be considered to address new issues that have emerged in this area.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business Friday, March 23, 2007. Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://www.hhs.gov/ohrp/sachrp/index.html.*

Dated: February 28, 2007.

Bernard A. Schwetz,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. E7–3882 Filed 3–5–07; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07AM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Joan Karr, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to 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. Written comments should be received within 60 days of this notice.

Proposed Project

Study to Examine Web-Based Administration of the Youth Risk Behavior Survey—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Youth Risk Behavior Survey (YRBS) has been conducted biennially since 1991 using paper-and-pencil questionnaires in schools. Because of technological improvements in survey research methods, CDC is considering changing to Web-based administration of the YRBS. Because YRBS is the only national source of data for at least 10 national health objectives in Healthy People 2010, it is critical to understand (1) whether it is feasible to change to web-based administration, and (2) how a change to web-based administration, both with and without the use of skip patterns in the questionnaire, might affect prevalence estimates of the priority health risk behaviors reported in the YRBS.

CDC is proposing two studies to address these issues. The first study is a survey of U.S. high school principals, using a questionnaire designed to assess the feasibility and burden of web-based administration in schools. The second study is a survey of approximately 6000 9th- and 10th-grade students attending schools in the United States, using the YRBS questionnaire. In the second study, students will be assigned randomly to one of the following conditions: (1) Paper-and-pencil group administration without skip patterns, (2) web-based group administration without skip patterns, (3) web-based group administration with skip patterns, and (4) web-based individual administration without skip patterns. An additional 1500 9th- and 10th-grade students assigned to condition #4 will participate in a sub-study to assess how incentives affect participation rates.

There are no costs to respondents except their time to participate in the survey and, in the case of school administrators, to assist in school recruitment.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hours)
High school students	7500	1	45/60	5625
High school principals	600	1	25/60	250
School administrators	210	1	30/60	105
Total				5980

Dated: February 28, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–3851 Filed 3–5–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and ControlSpecial Emphasis Panel (SEP): The Small Business Innovation Research (SBIR) 020, ''New Laboratory Tests for Tuberculosis and Detection of Drug Resistance'' and SRIB 021, ''Development of Novel Information System for Remote Tuberculosis Control and Prevention''

Correction: This notice was published in the **Federal Register** on February 23, 2007, Volume 72, Number 36, page 8166. The reference to the acronym SRIB 021 in the SEP title is corrected to read SBIR 021.

For Further Information Contact: Felix Rogers, PhD, M.P.H., Scientific Review Administrator, Coordinating Center for Infectious Diseases, National Center for Immunization and Respiratory Diseases, Office of the Director, CDC, 1600 Clifton Road NE., Mailstop E05, Atlanta, GA 30333, Telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 28, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office,Centers for Disease Control and Prevention.

[FR Doc. E7–3843 Filed 3–5–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Agricultural Center Review, Program Announcement (PAR) 06–057

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting of the aforementioned Special Emphasis Panel.

Times and Dates: 8 a.m.–5 p.m., April 10, 2007 (Closed). 8 a.m.–12 p.m., April 11, 2007 (Closed).

Place: Renaissance Hotel, 107 6th Street, Pittsburgh, PA 15222, telephone (412) 562–1200.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of research grant applications in

response to PAR 06–057, ''Agricultural Center Review.''

For Further Information Contact: Stephen Olenchock, Scientific Review Administrator, 1095 Willowdale Road, Morgantown, WV 26506, telephone (304) 285–6271.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–3852 Filed 3–5–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D–0432]

Guidance for Industry on Orally Inhaled and Intranasal Corticosteroids: Evaluation of the Effects on Growth in Children; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Orally Inhaled and Intranasal Corticosteroids: Evaluation of the Effects on Growth in Children.'' This guidance provides recommendations regarding the design, conduct, and evaluation of clinical trials to assess the effects of orally inhaled and intranasal corticosteroids on growth in children. For this class of drug products, measurement of growth is considered a sensitive surrogate of, and an important sentinel for, the potential to cause systemic effects. Growth studies designed and carried out following the recommendations in this guidance can provide adequate and well-controlled data that are consistent among drug products and can be included in product labeling. This guidance finalizes the draft guidance published on November 6, 2001.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Peter Starke, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 3300, Silver Spring, MD 20993–0002, 301–796–2300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Orally Inhaled and Intranasal Corticosteroids: Evaluation of the Effects on Growth in Children.'' This guidance provides recommendations for the design, conduct, and evaluation of clinical studies to assess the effects of orally inhaled and intranasal corticosteroids on linear growth (''growth study''). The guidance was developed by the Division of Pulmonary and Allergy Products in consultation with the Division of Metabolism and Endocrinology Products and the Office of Biostatistics to encourage the collection of evidence that can consistently and accurately describe the effects of intranasal and orally inhaled corticosteroids on growth velocity in children.

In July 1998, the Pulmonary and Allergy Drugs Advisory Committee and the Metabolic and Endocrine Drugs Advisory Committee were jointly convened to discuss the implications of findings in previous clinical studies that indicated that inhaled corticosteroids can, as a class of drug products, affect linear growth in pediatric patients. The joint committee concluded that data were sufficient to justify inclusion of a precautionary statement in the labeling for this class of drug products, but the data were inadequate to precisely determine the decrement in growth velocity resulting from the use of these drug products. Members of the joint committee recommended that companies filing new drug applications for all newly approved corticosteroid products conduct further studies, as post-approval phase 4 commitments, to assess the effects of nasally and orally inhaled corticosteroids on growth velocity in prepubertal children. On November 6, 2001 (66 FR 56109), FDA published for comment in the **Federal Register** a draft of this guidance.

Comments received from industry, professional societies, and consumer groups on the draft guidance have been taken into consideration in finalizing this guidance. Changes are based on thorough review of all comments received, growth studies submitted since publication of the draft guidance, and previously submitted growth data. Changes or updates were made to all sections of the guidance, and are briefly summarized here.

A new overview section and updated background and data analysis sections include a more thorough discussion of the objective of and the appropriate statistical comparisons for a growth study. These changes will affect future labeling for such studies. Recommendations for sample size calculations and primary and secondary ''sensitivity'' analyses have been reviewed and modified based on review of growth studies submitted since publication of the draft guidance as well as previously submitted data. The general study recommendations and protocol design sections include a discussion of the appropriate patient populations to be studied and modifications to recommendations for the inclusion and exclusion criteria, assessments of adherence, and spacer use.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on the evaluation of the effects of orally inhaled and intranasal corticosteroids on growth in children. 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 statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–3807 Filed 3–5–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche, CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc)

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180 (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of, Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: NOVAMANN (Ontario), Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.
Meriter Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225 (Formerly: General Medical Laboratories)
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521 (Formerly: SmithKline Beecham Clinical Laboratories)
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw,Lansing, MI 48915, 517–364–7400 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Patricia S. Bransford,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E7–3770 Filed 3–5–07; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

United States Visitor and Immigrant Status Indicator Technology (US–VISIT)

AGENCY: Department of Homeland Security, US–VISIT.

ACTION: Submission for OMB Review; 30-day notice of information collections under review; comment request.

SUMMARY: The Department of Homeland Security (DHS), US–VISIT Program, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The information collection was previously published in the **Federal Register** on January 5, 2007, at 72 FR 576, allowing for OMB review and a 60-day public comment period. Comments received by DHS are being reviewed as applicable.

The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 5, 2007. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to the Office of Information and Regulatory Affairs, Attn: Paula Braun, Desk Officer, Department of Homeland Security, US–VISIT, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Privacy Officer, US–VISIT Program, Department of Homeland Security, Washington, DC 20528; telephone 202–298–5200 (this is not a toll free number).

Analysis

Agency: Department of Homeland Security, US–VISIT Program.

Title: US–VISIT Program.

OMB Number: 1600–0006.

Frequency: One-time collection.

Affected Public: Foreign visitors into the U.S.

Number of Respondents: 156,732,442.

Estimated Time per Respondent: 15 seconds.

Total Burden Hours: 658,276 hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Description: The United States Visitor and Immigrant Status Indicator Technology (US–VISIT) is a program established by the Department of Homeland Security (DHS) to meet specific legislative mandates intended to strengthen border security, address critical needs in terms of providing decision makers with critical information, and demonstrate progress toward performance goals for national security, facilitation of trade and travel, and supporting immigration system improvements. US–VISIT represents a major achievement in creating an integrated border screening system that enhances our nation's security and efforts to reform our immigration and border management systems. Through US–VISIT, DHS is increasing our ability to manage the information collected about foreign visitors during the pre-entry, entry, status management, and departure processes, which allows us to conduct better analysis of that information, thereby strengthening the integrity of our immigration system.

William Morgan, Jr.,

Deputy Chief Information Officer, US–VISIT Program.

[FR Doc. 07–1065 Filed 3–2–07; 2:04 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Alzados by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3905 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Kayan New Land Party (KNLP) by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents,

the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3906 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Karenni National Progressive Party (KNPP) by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3907 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Karen National Union/Karen National Liberation Army (KNU/KNLA) by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3909 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Mustangs by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3910 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Arakan Liberation Party (ALP) by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the

ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3911 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Chin National Front/Chin National Army (CNF/CNA) by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3912 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 20, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided to the Chin National League for Democracy (CNLD) by an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or

procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3913 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

DATES: This determination is effective February 26, 2007.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act (''the Act''), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided under duress to a terrorist organization as described in subsection 212(a)(3)(B)(vi)(III) if warranted by the totality of the circumstances.

This exercise of authority as a matter of discretion shall apply to an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

When determining whether the material support was provided under duress, the following factors, among others, may be considered: whether the applicant reasonably could have avoided, or took steps to avoid, providing material support, the severity and type of harm inflicted or threatened, to whom the harm was directed, and, in cases of threats alone, the perceived imminence of the harm threatened and the perceived likelihood that the harm would be inflicted.

When considering the totality of the circumstances, factors to be considered, in addition to the duress-related factors stated above, may include, among others: the amount, type and frequency of material support provided, the nature of the activities committed by the terrorist organization, the alien's awareness of those activities, the length of time since material support was provided, the alien's conduct since that time, and any other relevant factor.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless it has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person. This exercise of authority does not affect the continued applicability of any other security-related ground of inadmissibility in section 212 of the Act, including subsections 212(a)(3)(B)(iv)(I) through (V), which continue to render inadmissible those who have engaged in terrorist activity as enumerated by those subsections.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular aliens described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 26, 2007.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. E7–3914 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2007–0008]

Data Privacy and Integrity Advisory Committee

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Data Privacy and Integrity Advisory Committee will meet on March 21, 2007 in Washington, DC. This meeting will be open to the public.

DATES: The Data Privacy and Integrity Advisory Committee will meet on Wednesday, March 21, 2007 from 9 a.m. to 12:30 p.m. and 2:15 p.m. to 3:30 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, Virginia. Send written material, comments, and requests to make oral presentations to Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528. Written materials, comments, and requests to make oral presentations at the meeting should reach the contact person listed by March 16, 2007. Requests to have a copy of your material distributed to each member of the committee prior to

the meeting should reach the persons listed under **FOR FURTHER INFORMATION CONTACT**, below, by March 16, 2007. Persons wishing to make comments or who are unable to attend or speak at the meeting may submit comments at any time. All submissions received must include the docket number: DHS–2007–0008 and may be submitted by any *one* of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow instructions for submitting comments on the Web site.
- *E-mail: PrivacyCommittee@dhs.gov*. Include docket number in the subject line of the message.
- *Fax*: (866) 466–5370.
- *Mail:* Ms. Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the docket number: DHS–2007–0008. Comments received will also be posted without alteration at *www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Committee, go to *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, or Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (571) 227–3813, by fax (571) 227–4171, or by e-mail *PrivacyCommittee@dhs.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

During the meeting, the DHS Chief Privacy Officer will provide an update on the activities of the DHS Privacy Office. In the morning and afternoon sessions, invited speakers will discuss policy development, data integrity, and IT transformation at DHS, as well as DHS' plans to implement the REAL ID Act. The Subcommittees will update the Committee on the work currently being conducted. A tentative agenda has been posted on the Privacy Advisory Committee Web site at *www.dhs.gov/privacy*.

At the discretion of the Chair, members of the public may make brief (i.e., no more than three minutes) oral presentations from 4 p.m.–4:30 p.m. If you would like to make an oral presentation at the meeting, please register in advance or sign up on the day of the meeting. If you would like a copy of your material(s) distributed to each member of the committee in advance, please submit 22 copies to Rebecca J. Richards by March 16, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Rebecca J. Richards as soon as possible.

Dated: February 28, 2007.

Kenneth Mortensen,

Acting Chief Privacy Officer.

[FR Doc. 07–1008 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF HOMELAND SECURITY

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Homeland Security Regarding Consultation Concerning Potential Vulnerabilities of the Location of Proposed New Utilization Facilities

I. Purpose

This Memorandum of Understanding (MOU) establishes a process to implement the provisions of Section 657 of the Energy Policy Act of 2005 (EPA), Public Law 109–58, 119 Stat. 594, 814 (2005). Section 657 states:

> Sec. 657. Department of Homeland Security Consultation
>
> Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

II. Background

Nuclear Regulatory Commission

Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, the NRC is responsible for licensing and regulating the construction and operation of commercial nuclear power plants (known as ''utilization facilities'') in the United States to protect the health and safety of the public and to promote the common defense and security. In conducting its review of applications for such facilities pursuant to the Commission's implementing regulations in 10 CFR Parts 50 and 52, the NRC must, among other matters, determine the suitability of the site for the proposed facility.

Among the provisions pertaining to the determination of site suitability, issues associated with the common defense and security are, as a general matter, addressed through the requirements of 10 CFR 100.21(f). This provision requires applicants to demonstrate that the site characteristics of the proposed location are such ''that adequate security plans and measures can be developed.'' In conducting its technical review of this portion of the application, the NRC addresses potential vulnerabilities of the location of the proposed facility to terrorist attack; this evaluation focuses on assessing the impact of the following factors:

(1) Pedestrian and vehicular land approaches, (2) railroad approaches, (3) waterborne approaches, (4) potential ''high-ground'' adversary advantage areas, (5) nearby road and/or transportation routes, and (6) nearby hazardous materials facilities, airports, dams, military and chemical facilities, and pipelines.

Commencing in FY07, a substantial number of applications for new nuclear power plants is expected.

Department of Homeland Security

The Department of Homeland Security (DHS), pursuant to the Homeland Security Act (HSA) of 2002, Public Law 107–296, 116 Stat. 2135; Homeland Security Presidential Directive 7 (HSPD–7); and the National Infrastructure Protection Plan (NIPP) of 2006, has the authority and responsibility to lead the unified national effort to secure America by preventing, deterring, and responding to terrorist attacks and other threats and hazards to the Nation, including protecting the Nation's critical infrastructure (CI) and key resources (KR), such as the subject ''utilization facilities.''

III. Consultation Roles and Responsibilities

The NRC will ''consult'' with the DHS under Section 657 of the EPA as follows:

> Before issuing a license for a utilization facility, the NRC will request, and the DHS will review and provide to the NRC comment on the potential vulnerabilities of the location of the proposed facility to terrorist attack. This review and comment will be based on information, including the application, provided by the NRC, and any other factors, consistent with DHS authorities, the DHS considers vital to

assessing the potential vulnerabilities of the location of the proposed facility to terrorist attack.

Within ten (10) days after acceptance and docketing of an application, the NRC will provide the DHS with the application and any other information it deems relevant. The NRC will communicate promptly any schedule delay.

Within 90 days of receipt of the application materials, the DHS will respond to the NRC in writing. This response will include any and all DHS comments concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack. If within 60 days of receipt of the application materials the DHS anticipates that it cannot complete its review within the 90-day time frame, the DHS will contact the NRC to discuss a mutually agreeable date by which it will respond to the NRC's request for consultation.

The NRC and the DHS recognize that certain portions of the information exchanged pursuant to this Memorandum of Understanding may be Safeguards Information in accordance with section 147 of the Atomic Energy Act of 1954, as amended; classified information; or other sensitive information that must be properly identified and protected from public disclosure in accordance with applicable requirements.

IV. Working Arrangements

The NRC Point of Contact for this agreement is: Team Leader, New Reactor Security Team, Reactor Security Branch, NSIR.

The DHS Point of Contact for this agreement is: Lead, Nuclear Sector Branch, CNPPD.

V. Funding

All activities pursuant to this MOU are subject to the availability of appropriated funds and each agency's budget priorities.

VI. Memorandum of Understanding

This MOU shall not be construed to provide a private right of action for or by any person or entity.

This MOU is effective upon signature by both parties. It will remain in effect until terminated by one of the parties following 30 days advance written notice to the other party.

Modifications to this MOU may be made by written agreement of both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: December 8, 2006.

Luis A. Reyes,

Executive Director for Operations.

Approved for the Department of Homeland Security.

Dated: February 20, 2007.

Robert B. Stephan,

Assistant Secretary for Infrastructure Protection.

[FR Doc. 07–1006 Filed 3–5–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–22]

Notice of Submission of Proposed Information Collection to OMB; Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection (Subsidy and Grant Information System (SAGIS) Automated Collections)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) use this information in budget submissions which are reviewed and approved by HUD field offices as the basis for obligating operating subsidies. This information is necessary to calculate the eligibility for operating subsidies under the Operating Fund Program regulation, as amended. The Operating Fund Program is designed to provide the amount of operating subsidy that would be needed for well-managed PHAs.

DATES: *Comments Due Date:* April 5, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0029) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information 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 of the proposed collection of information; (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 technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Allocation of Operating Subsidies under the Operating Fund Formula: Data Collection (Subsidy and Grant Information System (SAGIS) automated collections).

OMB Approval Number: 2577–0029.

Form Numbers: HUD–52722, HUD–52723 and HUD–53087.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) use this information in budget submissions which are reviewed and approved by HUD field offices as the basis for obligating operating subsidies. This information is necessary to calculate the eligibility for operating subsidies under the Operating Fund Program regulation, as amended. The Operating Fund Program is designed to provide the amount of operating subsidy that would be needed for well-managed PHAs.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,141	5		0.7		11,723

Total Estimated Burden Hours: 11,723.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 28, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–3805 Filed 3–5–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4889–N–09]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986: Revision of Definition of Effective Date

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice revises the definition of ''effective date'' in a notice published in the **Federal Register** on September 28, 2006, designating ''Difficult Development Areas'' (DDAs) and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code) (26 U.S.C. 42). HUD is responsible for designating DDAs and QCTs annually. The September 28, 2006, notice provided a definition of ''effective date'' that is revised by this notice to define ''multiphase'' LIHTC projects and to specify how such projects are to be treated when DDA or QCT designations change between phases.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated, on geographic definitions, and on the new provisions for multiphase projects, contact Michael K. Hollar, Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 402–5878, or send an e-mail to *Michael_K._Hollar@hud.gov.* For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone (202) 622–3040. For questions about the ''HUB Zones'' program, contact Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Suite 8800, Washington, DC 20416, telephone (202) 205–8885, fax (202) 205–7167, or send an e-mail to *hubzone@sba.gov.* A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

This Document

This notice revises the definition of ''effective date'' in a notice published in the **Federal Register** on September 28, 2006 (71 FR 57234). That notice designated DDAs and QCTs for purposes of the LIHTC, as governed by section 42 of the Code (Section 42). HUD is responsible for designating DDAs and QCTs annually, and, at this time, is revising the definition of ''effective date'' provided in the September 28, 2006, notice (see 71 FR 57238) to define ''multiphase'' LIHTC projects and specify how such projects are to be treated when DDA or QCT designations change between phases. In addition, this notice clarifies what is meant by ''certified in writing'' for purposes of demonstrating compliance with effective dates for DDA and QCT designations. This notice does not change the designations of DDAs and QCTs in the September 28, 2006, notice.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the Internal Revenue Code (the Code), including the LIHTC found at Section 42 of the Code. The requirement for HUD to designate DDAs and QCTs is found in Section 42(d)(5)(C) of the Code. State and local LIHTC-allocating agencies are responsible for allocating LIHTC to eligible projects according to approved Qualified Allocation Plans (QAPs). Most LIHTC-allocating agencies include in their QAPs a limitation on the amount of LIHTC that may be awarded to a particular applicant, project, and/or location in any year. When applicants plan LIHTC-financed developments that would require amounts of LIHTC in excess of the individual allocation limits defined in the applicable QAP (or in smaller states, that are larger than the annual per capital credit allocation authority), they are forced to divide their developments, and their LIHTC applications, into phases over 2 or more years in order to obtain all the tax credits needed to complete the project. If such developments are located in DDAs or QCTs, there is a possibility that the location of the development may lose its DDA/QCT status after the first phase has been allocated LIHTC, but before subsequent phases have received their allocation or applied for LIHTC. As the financing for developments in these situations is generally predicated on the additional LIHTC available because of the developments' location in DDAs/QCTs, the subsequent phases may become infeasible.

HUD's intent in revising designations of DDAs and QCTs is to direct scarce public resources, in the form of additional LIHTC subsidy, to projects in those locations with the greatest need for this additional subsidy as defined by statute. However, HUD does not intend for these changes in designations to ultimately prevent the development of affordable housing, particularly in cases where developments have been required to be done in phases by LIHTC-allocating agency limits on annual allocation amounts to individual applicants.

HUD, therefore, is establishing in this notice a definition of ''multiphase projects'' and specifying how effective dates in its notices designating DDAs and QCTs are to be applied to such projects. In addition, HUD is clarifying what is meant by ''certified in writing'' for purposes of demonstrating compliance with effective dates for DDA and QCT designations.

Definition of ''Multiphase Projects'' and Applicability of Effective Date

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria as certified in writing by the applicable LIHTC-allocating agency:

(1) In the first application for tax credit, the applicant must include an indication of the multiphase nature of the project (*i.e.*, the applicant's intent to make future applications for LIHTC because of QAP limitations, or agency allocation authority ceilings, for buildings located on a site, as defined

below). For purposes of applications made in calendar year 2007 only, the preceding sentence will be met if an applicant who previously submitted a complete application for an earlier phase of a multiphase project (when such earlier phase was in a QCT or DDA), but failed to properly identify all phases of the multiphase project in the earlier application, submits a complete application for the present phase of the same project and all phases of the project occur on a contiguous parcel of land;

(2) At the time credits are allocated to the first phase of the project, there must be common control (ownership, leasehold, or option to buy or lease) of all land where the buildings shall be constructed or rehabilitated (the site);

(3) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per capita credit authority of the LIHTC-allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(4) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

In the case of a multiphase project, the applicable DDA or QCT status of the site of the project for all phases of the project is that which was applicable when the project received its first allocation of LIHTC, as certified in writing by the LIHTC-allocating agency. For purposes of Section 42(h)(4)(B) of the Internal Revenue Code, the applicable DDA or QCT status of the site of the project for all phases of the project is that which was applicable when the building(s) in the first phase were placed in service or when the bonds were issued as certified in writing by the LIHTC-allocating agency.

For purposes of demonstrating that the effective date provisions in HUD DDA and QCT notices are met, ''certified in writing'' means that the LIHTC-allocating agency has provided a signed letter to the applicant stating that the LIHTC-allocating agency has found that the applicant meets the conditions set forth in HUD's notice.

Under this definition and application of effective date, a multiphase project located in a DDA or QCT when the first allocation of credit is made would be treated as if in a DDA or QCT throughout all phases of the project even if the DDA or QCT designation were subsequently changed. Under clause one of the definition, the applicant's first application notice must include the multiphase nature of the project. If the applicant failed to identify all phases of the multiphase development in the first application, then solely for purposes of applications made in 2007, a project that otherwise meets clauses 2 through 4 will qualify if all phases of the development occur on a contiguous parcel of land. Applications made by a different applicant after the DDA or QCT status of the site has been removed would not be eligible even if the applicants had obtained control of part of a site that would otherwise be eligible under the definition. Under clause 2 of the definition of a multiphase project, any buildings on land where control was obtained after the allocation of credit to the first phase of the project would not be eligible for treatment as in a DDA or QCT. Under clause 3 of the definition, if a project is built in phases to accommodate the capacity of the developer or some other reason, and not because the aggregate amount of credit required to fund the development exceeds annual limitations specified in the QAP (or the annual per capita credit authority of the LIHTC-allocating agency), the project is not eligible for continued treatment as in a DDA or QCT. Under clause 4, if an intervening year passes between application phases, the subsequent phase(s) of the project is (are) not eligible for continued treatment as in a DDA or QCT.

Revisions to the September 28, 2006, Notice

The section entitled ''Effective Date'' of the notice designating DDAs and QCTs for 2007 published in the **Federal Register** on September 28, 2006 (71 FR 57234), is hereby revised to read as follows:

For DDAs designated by reason of being in areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma (the GO Zone Designation), the designation is effective:

(1) For housing credit dollar amounts allocated and buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2008; or

(2) for purposes of Section 42(h)(4)(B) of the Internal Revenue Code, for buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2008, but only with respect to bonds issued after December 31, 2005.

The 2007 lists of QCTs and the 2007 lists of DDAs that are not part of the GO *Zone Designation are effective:*

(1) For allocations of credit after December 31, 2006; or

(2) for purposes of Section 42(h)(4)(B) of the Code, if the bonds are issued and the building is placed in service after December 31, 2006.

If an area is not on a subsequent list of DDAs or QCTs, the 2007 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the submission to the credit-allocating agency of a complete application by the applicant, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of Section 42(h)(4)(B) of the Code, if:

(a) The bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete as certified in writing by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC as certified in writing by the LIHTC-allocating agency. For purposes of Section 42(h)(4)(B) of the Internal Revenue Code, the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred as certified in writing by the LIHTC-allocating agency: (a) The building(s) in the first phase were placed in service or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria as certified in writing by the applicable LIHTC-allocating agency:

(1) In the first application for tax credit, the applicant must include an indication of the multiphase nature of the project (*i.e.*, the applicant's intent to make future applications for LIHTC because of Qualified Allocation Plan (QAP) limitations, or agency allocation authority ceilings, for buildings located on a site as defined below). For purposes of applications made in 2007 only, the preceding sentence will be met if an applicant who previously submitted a complete application for an earlier phase of a multiphase project (when such earlier phase was in a QCT or DDA), but failed to properly identify all phases of the multiphase project in the earlier application, submits a complete application for a present phase of the same project and all phases of the project occur on a contiguous parcel of land;

(2) At the time credits are allocated to the first phase of the project, there must be common control (ownership, leasehold, or option to buy or lease) of all land where the buildings shall be constructed or rehabilitated (the site);

(3) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant as defined in the QAP of the LIHTC-allocating agency, or the annual per capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(4) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

For purposes of demonstrating compliance with the effective date provisions of this notice, ''certified in writing'' means that the LIHTC-allocating agency has provided a signed letter to the applicant stating that the LIHTC-allocating agency has found that the applicant meets the conditions set forth in this notice.

The designations of QCTs under Section 42 of the Internal Revenue Code published on December 12, 2002 (67 FR 76451) for the U.S. Virgin Islands, and on December 19, 2003 (68 FR 70982) for American Samoa, Guam, and the Northern Mariana Islands, remain in effect.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has sole legal authority to designate DDAs and QCTs by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of these lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with, the Internal Revenue Code and associated regulations including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

In addition, the section entitled ''Interpretive Examples of Effective Date'' of the notice designating DDAs and QCTs for 2007 published on September 28, 2006 (71 FR 57234) is hereby amended with the addition of the following (in each case the description applied to a DDA is equally applicable to a QCT):

(Case G) Project G is a multiphase project located in a 2006 regular DDA that is NOT a designated regular DDA in 2007. The first phase of Project G received an allocation of credits in 2006 pursuant to an application filed March 15, 2006. An application for tax credits for the second phase Project G is filed with the allocating agency by the same entity on March 15, 2007. The second phase of Project G is located on a contiguous site controlled by the applicant at the time credits were allocated to the first phase. Credits are allocated to the second phase of Project G on October 30, 2007. The aggregate amount of credits allocated to the two phases of Project G exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that the application contains multiple phases. The second phase of Project G is therefore eligible for the increase in basis accorded a project in a 2006 regular DDA because it meets all of the conditions to be a part of a multiphase project.(Case H) Project H is a multiphase project located in a 2006 regular DDA that is NOT a designated regular DDA in 2007. The first phase of Project H received an allocation of credits in 2006 pursuant to an application filed March 15, 2006. An application for tax credits for the second phase Project H is filed with the allocating agency by the same entity on March 15, 2008. The second phase of Project H is located on a site that was not controlled by the applicant at the time credits were allocated to the first phase. Credits are allocated to the second phase of Project H on October 30, 2008. The aggregate amount of credits allocated to the two phases of Project H exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project H is therefore NOT eligible for the increase in basis accorded a project in a 2006 regular DDA because it does not meet all of the conditions for a multiphase project as defined in this notice. Project H is not on land controlled by the applicant at the time credits were allocated to the first phase. Also, the application for credits for the second phase of Project H was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely modifies the content of a previous notice designating DDAs and QCTs as required under Section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the LIHTC. As a result, this notice is not subject to review under the order.

Dated: March 1, 2007.

Darlene F. Williams,

Assistant Secretary for Policy, Development and Research.

[FR Doc. E7–3894 Filed 3–5–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0023).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Forms to Determine Compliance by Certain Landholders, 43 CFR part 426, OMB Control Number: 1006–0023. As a result of the regulatory requirements to ensure compliance with Federal reclamation law and assessment of the appropriate water rate [43 CFR 426.6(b)(2) and 43 CFR 426.9(b)], a new ''Religious or Charitable Organization Identification Sheet'' (Form 7–2578) has been developed for approval as part of this information collection. We request your comments on the proposed Reclamation Reform Act of 1982 (RRA) forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before May 7, 2007.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007. You may request copies of the proposed forms by writing to the above address or by contacting Stephanie McPhee at: (303) 445–2897.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426. The former title of this information collection was ''Limited Recipient Identification Sheet, Trust Information Sheet, Public Entity Information Sheet for Acreage Limitation, 43 CFR part 426.'' Because of the addition of the proposed new form to this information collection as described below, we have changed the title of this information collection to ''Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.'' This title change will allow us to capture the purpose of the forms in this information collection without listing lengthy form names.

Abstract: Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion. The proposed revisions to the Limited Recipient Identification Sheet will be included starting in the 2008 water year, and are designed to facilitate ease of completion.

Trust review—We are required to review and approve all trusts [43 CFR 426.7(b)(2)] in order to ensure trusts meet the regulatory criteria specified in 43 CFR 426.7. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria are met. When we become aware of trusts with a relatively small landholding (40 acres or less), we may extend to those trusts the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents. If we find nothing on the completed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion. The proposed revisions to the Trust Information Sheet will be included starting in the 2008 water year, and are designed to facilitate ease of completion.

Acreage limitation provisions applicable to public entities—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Pub. L. 91–310). We are required to ascertain whether or not public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public entities, we may extend to those public entities the option to complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation law for those public entities that hold 40 acres or less and thus do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion. The proposed revisions to the Public Entity Information Sheet will be effective starting in the 2008 water year and are designed to facilitate ease of completion.

Acreage limitation provisions applicable to religious or charitable organizations (*new form*)—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of

Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. A new ''Religious or Charitable Organization Identification Sheet'' (Form 7–2578) has been developed for approval as part of this information collection, and will allow us to establish certain religious or charitable organizations' compliance with Federal reclamation law. Reclamation anticipates a very minimal increase in burden hours resulting from the addition of this form because of the very limited type of landholders that can use this form. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion and will be effective starting in the 2008 water year.

Frequency: Generally, these forms will be submitted once per identified entity, trust, public entity, or religious or charitable organization. Each year, we expect new responses in accordance with the following numbers.

Respondents: Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 500.

Estimated Total Annual Burden on Respondents: 72 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Limited Recipient Identification Sheet	5	175	175	15
Trust Information Sheet	5	150	150	13
Public Entity Information Sheet	15	100	100	25
Religious or Charitable Identification Sheet	15	75	75	19
Totals		500	500	

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 29, 2007.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E7–3844 Filed 3–5–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0005).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0005. This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. We request your comments on the revised RRA forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before May 7, 2007.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007. You may request copies of the proposed revised forms by writing to the above address or by contacting Stephanie McPhee at: (303) 445–2897.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. These forms are submitted to districts who use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are

exempt from the requirement to submit RRA forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

Changes to the RRA forms and the instructions to those forms. We made a few editorial changes to the currently approved RRA forms and the instructions to those forms that are designed to assist the respondents by increasing their understanding of the forms, clarifying the instructions for use when completing the forms, and clarifying the information that is required to be submitted to the districts with the forms. The proposed revisions to the RRA forms will be included starting in the 2008 water year.

Frequency: Annually.

Respondents: Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Total Number of Respondents: 17,358.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 17,706.

Estimated Total Annual Burden on Respondents: 13,085 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	4,686	4,780	4,780
Form 7–2180EZ	45	483	493	370
Form 7–2181	78	1,369	1,396	1,815
Form 7–2184	45	36	37	28
Form 7–2190	60	1,841	1,878	1,878
Form 7–2190EZ	45	109	111	83
Form 7–2191	78	879	897	1,166
Form 7–2194	45	4	4	3
Form 7–21PE	75	166	169	211
Form 7–21PE–IND	12	5	5	1
Form 7–21TRUST	60	1,002	1,022	1,022
Form 7–21VERIFY	12	6,175	6,299	1,260
Form 7–21FC	30	243	248	124
Form 7–21XS	30	164	167	84
Form 7–21FARMOP	78	196	200	260
Totals		17,358	17,706	13,085

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 29, 2007.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E7–3845 Filed 3–5–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0006).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Bureau of Reclamation (we, our, or us) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0006. This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. We request your comments on the revised RRA forms and specific aspects of the information collection.

DATES: Your written comments must be received on or before May 7, 2007.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007. You may request copies of the proposed revised forms by writing to the above address or by contacting Stephanie McPhee at: (303) 445–2897.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: These forms are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms as required by the RRA, 43 CFR part 426, and 43 CFR part 428. This information allows us to establish water user compliance with Federal reclamation law.

Changes to the RRA forms and the instructions to those forms. The changes made to the current Form 7–21SUMM–C, Form 7–21SUMM–R, and the corresponding instructions clarify the completion instructions for these forms (for example, adding verbiage to clarify when requested acreages are to be provided on a westwide or district-specific basis). Other changes to the forms and the corresponding instructions are editorial in nature and are designed to assist the respondents by increasing their understanding of the forms, and clarifying the instructions for use when completing the forms. The proposed revisions to the RRA forms will be effective in the 2008 water year.

Frequency: Annually.

Respondents: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 225.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Number of Annual Responses: 281.

Estimated Total Annual Burden on Respondents: 11,240 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
7–21SUMM–C and associated tabulation sheets	40	188	235	9,400
7–21SUMM–R and associated tabulation sheets	40	37	46	1,840
Totals		225	281	11,240

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 29, 2007.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E7–3847 Filed 3–5–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 11, 2006, and published in the **Federal Register** on October 18, 2006, (71 FR 61511), Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1–Piperidinocyclohexane-carbonitrile (8603)	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Varian, Inc., Lake Forest to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc., Lake Forest to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–3919 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

ATF Fitness Products, Inc.; Denial of Application

On February 6, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to ATF Fitness Products, Inc. (Respondent) of Oakmont, Pa. The Show Cause Order proposed to deny Respondent's pending application for

registration as a distributor of the list I chemical ephedrine, on the ground that its registration would be inconsistent with the public interest. Show Cause Order at 1.

The Show Cause order alleged that ephedrine is a precursor chemical that is ''commonly diverted'' for use in the manufacture of methamphetamine, a Schedule II controlled substance *Id.* The Show Cause Order specifically alleged that Respondent was proposing to distribute combination ephedrine products to gyms, fitness shops, and dietary supplement dealers, and that only a very small amount of the legitimate commerce in these products occurs in such smaller retail establishments. *Id.* at 2. The Show Cause Order alleged that many smaller or non-traditional retailers of combination ephedrine products ''purchase inordinate amounts of these products and become conduits for the diversion of listed chemical[s] into illicit drug manufacturing.'' *Id.*

Relatedly, the Show Cause Order alleged that ''[t]here is no legitimate therapeutic market for this type of product'' at the type of stores Respondent ''propose[s] to supply,'' and that Respondent would be ''fueling the diversion of precursor chemicals into the illicit manufacture of methamphetamine.'' *Id.* at 3. The Show Cause Order also alleged that in conducting verifications of Respondent's proposed customers, DEA investigators were unable to determine whether some of the proposed customers intended to buy ephedrine products from it. *Id.* at 2.

Finally, the Show Cause Order alleged that in October 2004, the Food and Drug Administration conducted an inspection of Respondent. *Id.* at 2. The Show Cause Order alleged that during the inspection, FDA investigators found quantities of ephedra, a banned product.

The Show Cause Order, which also informed Respondent of its right to a hearing, was served by certified mail, return receipt requested. On February 13, 2006, Respondent received the Show Cause Order as evidenced by the signed return receipt card. Since that time, neither Respondent, nor anyone purporting to represent it, has responded. Because (1) more than thirty days have passed since Respondent's receipt of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived its right to a hearing. *See* 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material found in the investigative file and make the following findings.

Findings

Ephedrine is a list I chemical that, while having a therapeutic use, is easily extracted from lawful products and used in the illicit manufacture of methamphetamine, a schedule II controlled substances. *See* 21 U.S.C. 802(34); 21 CFR 1308.12(d). As noted in numerous DEA orders, methamphetamine is an extremely potent and addictive central nervous system stimulant. *See T. Young Associates, Inc.,* 71 FR 60567 (2006). The illegal manufacture and abuse of methamphetamine pose a grave threat to this country. Methamphetamine abuse has destroyed numerous lives and families and has ravaged communities. Moreover, because of the toxic nature of the chemicals used in producing the drug, illicit methamphetamine laboratories cause serious environmental harms. *Id.*

Respondent is a Pennsylvania corporation which is located at 140 Pennsylvania Avenue, Oakmont, Pa. Respondent's founder and president is Mr. James Vercellotti.

Respondent previously held a DEA Certificate of Registration to distribute list I chemicals. The registration, however, expired on June 30, 2001. On September 5, 2001, two DEA Diversion Investigators (DIs) conducted a regulatory investigation at Respondent's Oakmont facility. On that date, Respondent's chief financial officer told the DIs that Respondent had submitted a renewal application.

During the visit, William Charlesworth, Respondent's vice president, informed the DIs that Respondent had previously purchased bulk ephedrine powder and manufactured a combination ephedrine product, Sci-Fit Ephedrine HCL, for Asthma Relief. Respondent's officials further maintained that they were under the assumption that their distributor's registration authorized them to engage in manufacturing. The DIs subsequently advised an official of Respondent that while a manufacturer's registration authorizes its holder to distribute, a distributor's registration does not authorize its holder to manufacture.

On September 8, 2001, Mr. Charlesworth telephoned one of the DIs and informed him that Respondent was withdrawing its renewal application in part because list I products comprised less than one percent of its sales. Respondent subsequently submitted a letter to DEA withdrawing its application.

On May 5, 2004, Respondent submitted a new application for a registration to distribute ephedrine. On September 28, 2004, two DIs returned to Respondent's facility to conduct a pre-registration investigation and met again with its president. Respondent's president told the DIs that it was a wholesale distributor of over-the-counter fitness products including food supplements and that it had customers nationwide including GNC, a chain of nutritional supplement retailers, and Walgreens, a chain of pharmacies. Respondent's president also told the DIs that the firm had been in business for fourteen years and that it expected that list I products would provide less than two percent of its sales.

Respondent provided the DIs with a list of fifty potential list I customers. Subsequently, a DI contacted ten of Respondent's customers. Seven of the stores stated that they did not plan to purchase ephedrine products; only two of the stores indicated that they would purchase the products from Respondent. Respondent's president further stated that it would require its List I customers to provide complete identification information prior to selling the products to them and that its sales manager would verify the existence of each business and its need for the products.

Following the on-site inspection, DEA was notified that the Food and Drug Administration (FDA) had conducted an inspection of Respondent's facility. During the inspection, FDA found that Respondent had in its possession approximately $13,500 worth of products, which either contained MaHuang Extract, a source of ephedrine alkaloids, or claimed to when they did not. Eight months earlier, FDA had issued a final rule banning these products on the ground that they are adulterated and present an unreasonable risk of illness or injury under section 402(f)(1)(A) of the Federal Food, Drug, and Cosmetic Act (FDA Act), 21 U.S.C. 342(f)(1)(A). *See* 69 FR 6788 (2004). The FDA's ban became effective on April 12, 2004.

According to the FDA, Respondent's officials asserted that they intended to export the product. Respondent's officials could not, however, provide the documentation required to demonstrate its compliance with section 801(e)(1) of the FDA Act, 21 U.S.C. 381(e)(1). FDA officials also concluded that some of the products were mislabeled in violation of federal law because they claimed to contain ingredients that were not actually present. On February 25, 2005, the U.S. Attorney's Office for the Western District of Pennsylvania filed a complaint for forfeiture of the products and U.S. Marshals seized them.

Subsequently, the FDA found that Respondent had in its possession

another product (Lipodrene), which also contained ephedrine alkaloids. On January 12, 2006, the U.S. Attorney's Office filed an additional complaint which sought the forfeiture of these products. U.S. Marshalls seized these products, which were valued at approximately $ 16,000.

Discussion

Under 21 U.S.C. 823(h), an applicant to distribute List I chemicals is entitled to be registered unless the registration would be ''inconsistent with the public interest.'' In making this determination, Congress directed that I consider the following factors:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Id.

''These factors are considered in the disjunctive.'' *Joy's Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for registration should be denied. *See, e.g., David M. Starr*, 71 FR 39367 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Here, I conclude that an analysis of each factor is unnecessary and that Respondent's application should be denied based on Factor Two, its record of non-compliance with applicable laws.

As recognized in numerous final orders, the illicit manufacture and abuse of methamphetamine have had pernicious effects on families and communities throughout the nation. Preventing the diversion of list I chemicals into the illicit manufacture of methamphetamine is of critical importance in protecting the public from the devastation wreaked by this drug.

While the investigative file in this case contains no evidence establishing the risk of diversion by establishments such as those which Respondent proposed to distribute its products to, the firm's record of non-compliance with other federal laws does not inspire confidence in its willingness to faithfully obey DEA regulations. Here, the investigative file establishes two separate instances in which Respondent violated the FDA Act. Moreover, FDA found these violations well after the rule banning ephedrine alkaloids went into effect.

In section 303(h) of the CSA, Congress broadly directed that the Attorney General consider ''compliance by the applicant with applicable Federal, State, and local law,'' 21 U.S.C. 823(h)(2), in determining whether to grant a list I distributor's registration. In contrast to the provision applicable to a practitioner's registration, Congress did not limit the subject matter of the laws that are properly considered in determining whether an applicant's compliance record supports granting it a registration. *Cf. id.* § 823(f)(4) (directing consideration of a practitioner's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances'').

Moreover, Respondent's apparent willingness to sell products which have been banned (as evidenced by the fact that banned products were found not once, but twice at its facility) and/or its inability to properly document its compliance with the FDA act (with respect to its assertion that it intended to export the products found in the first incident), are sufficiently probative of the manner in which it would likely fulfill its obligations as a registrant under the Controlled Substances Act.[1] I thus conclude that granting it a registration would ''be inconsistent with the public interest.'' *Id.* § 823(h).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) & 0.104, I order that the application of Respondent ATF Fitness Products, Inc., for a DEA Certificate of Registration as a distributor of list I chemicals be, and it hereby is, denied. This order is effective April 5, 2007.

Dated: February 23, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–3856 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–09–P

[1] The CSA imposes extensive recordkeeping requirements on List I chemical distributors. See 21 CFR Pt. 1310.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Georgia Convenience Wholesale, Inc.; Denial of Application

On February 6, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Georgia Convenience Wholesale, Inc., (Respondent) of Doraville, Georgia. The Show Cause Order proposed to deny Respondent's pending application for a Certificate of Registration to distribute list I chemicals on the ground that its registration ''would be inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 823(h)).

The Show Cause Order specifically alleged that on April 19, 2005, Respondent applied for a registration to distribute list I chemicals including pseudoephedrine, ephedrine and phenylpropanolamine (PPA), and that these products ''are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance.'' Show Cause Order at 1–2. The Show Cause Order alleged that Respondent was proposing to distribute these products to convenience stores, and that ''law enforcement officials have observed that an overwhelming proportion of precursors found at illicit methamphetamine sites have involved non-traditional pseudoephedrine and ephedrine brands sold through convenience stores.'' *Id.* at 2. The Show Cause Order also alleged that as non-traditional products ''become more tightly regulated, even traditional products are subject to diversion.'' *Id.*

The Show Cause Order further alleged that during a pre-registration investigation, Respondent's owner/operator was not aware that PPA had been withdrawn from the over-the-counter market. *Id.* Relatedly, the Show Cause Order alleged that Respondent had also sought registration for other list I chemicals even though these chemicals ''were not ingredients in any over-the-counter drug product.'' *Id.* Finally, the Show Cause Order alleged that Respondent ''does not have adequate experience or familiarity with products and the sales potentials in the industry to carry out the responsibilities of a registrant and prevent the diversion of listed chemical precursors into illicit activities.'' *Id.* at 3.

On or about February 24, 2006, the Show Cause Order, which also notified Respondent of its right to request a hearing, was served by certified mail,

return receipt requested, as evidenced by the signed return receipt card. Since that time, neither Respondent, nor anyone purporting to represent it, has responded. Because (1) more than thirty days have passed since service of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived its right to a hearing. *See* 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material contained in the investigative file and make the following findings.

Findings

Respondent is a Georgia corporation which is located at 4030 Pleasantdale Road, Doraville, Georgia. Respondent is a wholesale distributor of general merchandise to convenience stores, gas stations, candy stores, dollar stores, party stores, and liquor stores in the Atlanta, Georgia metropolitan area. Respondent has been in business since May 2005.

On April 19, 2005, Respondent's president, Mr. Mohammad S. Yaqoob, applied for a DEA Certificate of Registration to distribute list I chemicals. Specifically, Respondent applied to distribute ephedrine, methylephedrine, n-methlypseudoephedrine, norpseudoephedrine, phenylpropanolamine (PPA), and pseudoephedrine.

As explained in numerous DEA final orders, both pseudoephedrine and ephedrine currently have therapeutic uses. *See, e.g., Tri-County Bait Distributors*, 71 FR 52160, 52161 (2006).[1] Both chemicals are, however, regulated under the Controlled Substances Act because they are precursor chemicals which are easily extracted from non-prescription products and used in the illicit manufacture of methamphetamine, a Schedule II controlled substance. *See* 21 U.S.C. § 802(34); 21 CFR 1308.12(d).

Methamphetamine is a powerful and highly addictive central nervous system stimulant. *See, e.g., Tri-County Bait Distributors*, 71 FR at 52161. The illegal manufacture and abuse of methamphetamine pose a grave threat to this country. Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. Moreover, because of the toxic nature of the chemicals which are used to make the drug, the illegal manufacture of methamphetamine causes serious environmental harms. *Id.*

On June 9, 2005, two DEA Diversion Investigators (DIs) went to Respondent's proposed registered location to conduct a pre-registration investigation. The DIs met with Mr. Yaqoob, who informed the investigators that he had purchased the business on May 1, 2005. The DIs also met with Mr. Omar, Respondent's Vice-President.

Both Mr. Yaqoob and Mr. Omar told the DIs that each had previously owned a gas station and had sold list I chemical products. Mr. Yaqoob informed the DIs that Respondent's list I customers would be convenience stores and gas stations. Numerous DEA orders have found that these establishments are non-traditional (or gray market) retailers of list I chemical products. *See, e.g., T. Young Associates, Inc.*, 71 FR 60567, 60568 (2006).

Mr. Yaqoob also provided the DIs with a list of the list I chemical products Respondent intended to distribute. The list was comprised entirely of traditional cold and sinus medicines that contain pseudoephedrine. When one of the DIs asked Mr. Yaqoob why he had originally requested authorization to handle other list I chemicals, Mr. Yaqoob stated that he had not known exactly which drug codes were needed to handle pseudoephedrine so he asked for the additional codes. Mr. Yaqoob, however, had submitted a letter, which is dated prior to the onsite inspection, withdrawing Respondent's request to handle PPA, methylephedrine, n-methlypseudoephedrine, and norpseudoephedrine.

The investigation determined that Respondent's business is located in a large brick building which has an alarm system with motion detectors, glass break strips, and metal contact strips, and is monitored by a security company. Moreover, the doors were equipped with metal cross bars and dead bolt locks. Finally, the list I products were to be stored in a separate room (which was to remain locked at all times) and not in the warehouse. Furthermore, Respondent appeared to have adequate procedures for handling the list I products, as well as for identifying and verifying new customers.

Discussion

Under 21 U.S.C. 823(h), an applicant to distribute list I chemicals is entitled to be registered unless the registration would be ''inconsistent with the public interest.'' In making this determination, Congress directed that I consider the following factors:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Id.

''These factors are considered in the disjunctive.'' *Joy's Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for registration should be denied. *See, e.g., David M. Starr*, 71 FR 39367 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

In this case, I acknowledge that factors one, two, and three would not bar Respondent's registration. I find dispositive, however, that Respondent lacks relevant experience in the wholesale distribution of list I chemicals (factor four) and that it intends to distribute list I chemicals to the gray market (factor five), a market in which the risk of diversion is substantial. Consistent with DEA precedents, I hold that Respondent's registration would be inconsistent with the public interest.

Factor One—The Maintenance of Effective Controls Against Diversion

This investigative file does not establish that Respondent would fail to maintain adequate procedures to protect against diversion. Moreover, the file establishes that Respondent would provide adequate security of list I chemical products to protect them from theft. Thus, this factor does not support a finding that Respondent's registration would be inconsistent with the public interest.

Factors Two and Three—Compliance With Applicable Laws and the Applicant's Prior Record of Relevant Criminal Convictions

There is no evidence that Respondent is not in compliance with applicable Federal, State, or local laws. Relatedly, there is no evidence that Respondent, or any person affiliated with it, has ever been convicted of a crime under either Federal or State laws relating to

[1] The FDA is, however, currently proposing to remove combination ephedrine-guaifenesin products from its over-the-counter (OTC) drug monograph and to declare them not safe and effective for OTC use. See 70 FR 40232 (2005).

controlled substances or listed chemicals. I thus conclude that neither factor supports a finding that Respondent's registration would be inconsistent with the public interest.

Factor Four—The Applicant's Past Experience in the Distribution of Listed Chemicals

DEA precedent establishes that ''an applicant's lack of experience in distributing list I chemicals creates a greater risk of diversion and thus weighs heavily against the granting of an application.'' *Tri-County Bait Distributors*, 71 FR at 52163. According to the investigative file, Respondent's president and vice-president previously owned gas stations at which they sold list I chemical products. But as I explained in *Tri-County Bait Distributors*, merely engaging in the retail sale of these products is not sufficient to establish that an applicant has experience which is relevant to fulfilling the regulatory obligations of a wholesaler of these products. *Id.*

Distributors of list I chemicals are subject to a comprehensive and complex regulatory scheme.*See* 21 CFR parts 1309 and 1310. Moreover, prior to the enactment of the Combat Methamphetamine Epidemic Act of 2005, retail distributors of ephedrine and pseudoephedrine were generally exempt from recordkeeping and reporting requirements.[2]

Accordingly, for an applicant's (or its key employee's) experience to be relevant, the key employee must have been actively involved in the fulfillment of a registrant's regulatory obligations as a wholesale distributor and demonstrate adequate knowledge of the applicant's proposed products.[3] Because neither of Respondent's key employees has such experience, I conclude that this factor supports a finding that granting it a registration would be inconsistent with the public interest.

Factor Five—Other Factors That Are Relevant to and Consistent With Public Health and Safety

Numerous DEA orders recognize that convenience stores and gas-stations constitute the non-traditional retail market for legitimate consumers of products containing pseudoephedrine and ephedrine. *See, e.g.*, *Tri-County Bait Distributors*, 71 FR at 52161; *D & S Sales*, 71 FR 37607, 37609 (2006); *Branex, Inc.*, 69 FR 8682, 8690–92 (2004). DEA orders also establish that the sale of list I chemical products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. *See, e.g.*, *Joey Enterprises*, 70 FR 76866, 76867 (2005). As *Joey Enterprises* explains, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' *Id. See also TNT Distributors*, 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores''); *OTC Distribution Co.*, 68 FR 70538, 70541 (2003) (noting ''over 20 different seizure of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in eight-month period, distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.''); *MDI Pharmaceuticals*, 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine'').

Significantly, all of Respondent's proposed customers participate in the non-traditional market for ephedrine and pseudoephedrine products. DEA orders recognize that there is a substantial risk of diversion of list I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See, e.g. Joy's Ideas,* 70 FR at 33199 (finding that the risk of diversion was ''real'' and ''substantial''); *Jay Enterprises, Inc.*, 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' should application be granted). Under DEA precedents, an applicant's proposal to sell into the non-traditional market weighs heavily against the granting of a registration under factor five. So too here.

Because of the methamphetamine epidemic's devastating impact on communities and families throughout the country, DEA has repeatedly denied an application when an applicant proposed to sell into the non-traditional market and analysis of one of the other statutory factors supports the conclusion that granting the application would create an unacceptable risk of diversion. Thus, in *Xtreme Enterprises*, 67 FR 76195, 76197 (2002), my predecessor denied an application observing that the respondent's ''lack of a criminal record, compliance with the law and willingness to upgrade her security system are far outweighed by her lack of experience with selling list I chemicals and the fact that she intends to sell ephedrine almost exclusively in the gray market.'' I have repeatedly adhered to this reasoning in denying applications to distribute list I chemicals to the non-traditional market. See, *e.g.*, Jay Enterprises, 70 FR at 24621; *Prachi Enterprises,* 69 FR 69407, 69409 (2004).

Here, Respondent's key persons have no experience in the wholesale distribution of list I chemical products and yet the firm intends to distribute these products to non-traditional retailers, a market in which the risk of diversion is substantial. *See Taby Enterprises of Osceola, Inc.*, 71 FR 71557, 71559 (2006). Given these findings, I hold that granting Respondent's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) and 0.104, I order that the application of Georgia Convenience Wholesale, Inc., for a DEA Certificate of Registration as a distributor of list I chemicals be, and it hereby is, denied. This order is effective April 5, 2007.

Dated: February 23, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–3839 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–09–P

[2] Effective September 30, 2006, retail distributors are now required to maintain a logbook which records the name and address of each purchaser of ephedrine or a pseudoephedrine product containing more than 60 mg. of the chemical, the date and time of the sale, the product name and the quantity sold.

[3] Respondent initially sought registration for additional chemicals beyond pseudoephedrine and ephedrine even though it intended only to carry products containing pseudoephedrine. According to the documentary evidence, Respondent withdrew its request to be registered for these chemicals before the inspection. Accordingly, I conclude that Respondent's initial request to be registered for the additional chemicals does not support a finding that it lacks adequate product knowledge.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

MK Distributing, Inc.; Denial of Application

On May 25, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to MK Distributing (Respondent) of Arvada, Colorado. The Show Cause Order proposed to deny Respondent's pending application for a DEA Certificate of Registration as a distributor of list I chemicals, on the ground that its registration would be inconsistent with the public interest. *See* Show Cause Order at 1 (citing 21 U.S.C. 823(h)).

More specifically, the Show Cause Order alleged that on November 18, 2003, Respondent's owner, Frederick H. Gates, had applied for a registration to distribute ephedrine and pseudoephedrine, which are precursor chemicals used in the illicit manufacture of methamphetamine. *Id.* at 1–2. The Show Cause Order alleged that Respondent's customer base ''is comprised primarily of gas stations, convenience stores, and independent grocers,'' and that these establishments are ''sources for the diversion of listed chemical products.'' *Id.* at 2.

The Show Cause Order further alleged that on April 1, 2003, Mr. Gates had purchased Respondent and that between that date and October 2003, Respondent had distributed 18,351 bottles and 3,720 packets of combination ephedrine (25 mg) products under the DEA registration of its previous owner. *Id.* at 2–3. The Show Cause Order alleged that Mr. Gates' use of the previous owner's registration violated DEA regulations that prohibit the assignment or transfer of a registration without the written consent of the Administrator. *Id.* at 3 (citing 21 CFR 1309.63).

The Show Cause Order also alleged that between May and October 2003, Respondent sold 1,056 bottles and 672 packets of ephedrine to the Barn Store, a small independent grocer, and that these sales were ''far in excess of legitimate demand for these products.'' *Id.* Relatedly, the Show Cause Order alleged that during the same period, Respondent sold 849 bottles and 312 packets of ephedrine products to a combination gas station/convenience store, and that these sales were also ''far in excess of legitimate demand for these products.'' *Id.* The Show Cause Order thus concluded by alleging that all of Respondent's customers are part of the non-traditional market for list I chemical products, that its sale of these products ''is inconsistent with the known legitimate market and * * * end-user demand for [these] products,'' and that granting its application ''would likely lead to increased diversion of list I chemicals.'' *Id.* at 4.

On June 6, 2005, the Show Cause Order, which also notified Respondent of its right to request a hearing, was served by certified mail, return receipt requested, as evidenced by the signed return receipt card. Since that time, neither Respondent, nor anyone purporting to represent it, has responded. Because (1) more than thirty days have passed since service of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived its right to a hearing. *See* 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material contained in the investigative file and make the following findings.

Findings

Methamphetamine and the List I Chemical Market

Both ephedrine (in combination with guaifenesin) and pseudoephedrine currently have therapeutic uses and are generally available as non-prescription products.[1] *See Tri-County Bait Distributors,* 71 FR 52160, 521612 (2006). Both chemicals are, however, regulated under the Controlled Substances Act because they are easily extracted from non-prescription products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance. *See* 21 U.S.C. 802(34); 21 CFR 1308.12(d).

Methamphetamine is a powerful and addictive central nervous system stimulant. *See Gregg Brothers Wholesale Co.,* 71 FR 59830 (2006). The illegal manufacture and abuse of methamphetamine pose a grave threat to this country. Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. Moreover, because of the toxic nature of the chemicals used to make the drug, its manufacture causes serious environment harms.[2] *Id.*

In numerous cases, DEA has shown through expert testimony that only a small percentage of pseudoephedrine sales occur at gas stations and convenience stores and that these stores constitute a non-traditional market for the legitimate commerce in these products. *See, e.g., T. Young Associates, Inc.,* 71 FR 60567, 60568 (2006); *D & S Sales,* 71 FR 37607, 37608–09 (2006); *Branex, Inc.,* 69 FR 8682, 8690–92 (2004). DEA has further established that the monthly expected sales of combination ephedrine products by non-traditional retailers such as convenience stores and gas stations to meet legitimate demand, *i.e.*, the purchase of the products for their medically approved use as a bronchodilator to treat asthma, is between $0 and $25, with an average of $12.58. *See, e.g., T. Young Associates, Inc.,* 71 FR at 60567 n.2 & 60568 (2006); *Tri-County Bait Distributors,* 71 FR 52160, 52161–62 (2006); *D & S Sales,* 71 FR 37607, 37608–09 (2006). DEA has also shown that a monthly retail sale of $60 to meet legitimate consumer demand for ephedrine products ''would occur about once in a million times in random sampling.'' *T. Young,* 71 FR at 60568 (int. quotations and citations omitted).

Findings Pertinent to Respondent

Respondent is a Colorado corporation which is located at 6150 W. 55th Avenue, Arvada, Colorado. On November 18, 2003, Respondent's owner, Mr. Frederick H. Gates, submitted an application for a registration to distribute the list I chemicals ephedrine and pseudoephedrine. Respondent is a wholesaler of pornographic magazines, DVDs, videos, toys and novelty items in the Colorado Springs area. Respondent's customer base is largely comprised of non-traditional retailers of list I chemical products. *See, e.g., T. Young Associates, Inc.,* 71 FR at 60568.

Respondent was previously owned by Mike and Jane Kleppen, who incorporated the firm in November 2001; this entity held a DEA registration to distribute list I chemicals which was last renewed on December 9, 2002. According to the investigative file, on April 1, 2003, the Kleppens sold the business to either Mr. Gates or another firm owned by him. The Kleppens did not, however, surrender MK Distributing's DEA registration.

Between April 1, 2003, and October 8, 2003, Respondent continued to distribute large quantities of combination ephedrine products using the registration issued to MK Distributing under its previous owners. On the latter date, two DEA Diversion Investigators (DIs) went to MK

[1] Combination ephedrine-guaifenesin products are currently approved for use as a bronchodilator for the treatment of asthma. The FDA is, however, currently proposing to remove these products from its over-the-counter (OTC) drug monograph and to declare them not safe and effective for OTC use. *See* 70 FR 40232 (2005).

[2] According to the investigative file, in 2002, law enforcement agencies seized 452 illicit methamphetamine laboratories in Colorado.

Distributing's warehouse and met with Jane Kleppen. The DIs questioned Ms. Kleppen as whether the new owners had obtained a DEA registration. Ms. Kleppen advised the DIs that on April 1, 2003, MK Distributing had been purchased by a firm called ''Pleasures,'' and that the latter firm had not applied for a DEA registration because of its inability to obtain a tax identification number.

The DIs informed Ms. Kleppen that the new company was not authorized to use the registration. One of the DIs then asked Ms. Kleppen to voluntarily surrender the DEA registration; Ms. Kleppen agreed and signed a voluntary surrender form. Ms. Kleppen then surrendered the list I products that were in Respondent's warehouse.

Ms. Kleppen told the DIs that the original certificate of registration was at her residence and that there were additional list I products on Respondent's four delivery vans. Accordingly, the following day, the DIs returned to Respondent and obtained the original certificate from Ms. Kleppen. Ms. Kleppen then turned over to the DIs additional list I products, which were subsequently returned to the supplier.

As stated above, on November 18, 2003, Mr. Gates (Respondent's new owner) applied for a registration. On July 1, 2004, the same two DIs returned to Respondent's warehouse to conduct a pre-registration investigation. During this visit, Mr. Gates told the DIs that he expected that list I products would be approximately ten percent of Respondent's total sales. When asked what ephedrine was used for, Mr. Gates told the DIs that it was used by truck drivers to stay alert, for weight loss, and methamphetamine.

As part of the application process, Respondent was required to complete a questionnaire. On this questionnaire, Mr. Gates stated that ''[t]he new owners of MK Distributing, LLC[,] have sold 18,351 bottles of Ephedrine 25 mg, and 3,720 packets of ephedrine 25 mg before DEA investigators * * * pulled'' the registration. Mr. Gates also provided a list of the monthly purchases of list I products by Respondent's customers from May through October 2003.

A representative sampling of this information shows that Respondent was selling massive amounts of combination ephedrine products to its gas station/convenience store customers.[3] Between May and September, Respondent sold 720 bottles (for a monthly average of 144) to the Kwik-Way Dublin, 960 bottles (for a monthly average of 192) to the Corner Store, and 654 bottles (for a monthly average of 130.8) to Lil T Foods. During the same period, Respondent sold 1147 bottles (for a monthly average of 229.4) to the Broken Wheel, 1200 bottles (for a monthly average of 240) to PHA, and 692 bottles (for a monthly average of 138.40) to Centron. Finally, Respondent sold 828 bottles (for a monthly average of 165.60) to R & S, 768 bottles (for a monthly average of 153.6) to the South Circle Station, and 993 bottles (for a monthly average of 198.6) to the Conoco Union gas station.

According to the investigative file, the DIs were told by an employee at one store that the retail price of the sixty-count bottles was $7.99. This figure is consistent with other information that DEA has obtained during investigations in Colorado. *See Wild West Wholesale,* 72 FR 4042, 4043 (2007) (finding that retail price was $5.99 for 48-count combination ephedrine product).

At an average retail price of $7.99 per bottle, the monthly average sales of the above stores were: Kwik-Way Dublin, $1151; Corner Store, $1534; LiL T Foods, $1045; Broken Wheel, $1833; PHA, $1918; Centron, $1106; R & S, $1323; South Circle, $1227; and Conoco Union, $1587.[4] The average monthly sale for all of these stores was $1414. As explained above, through expert testimony, DEA has established that the monthly expected sales range of combination ephedrine products at a non-traditional retailer to meet legitimate consumer demand is between $0 and $25, with an average of $12.58; a monthly retail sale of $60 to meet legitimate consumer demand at a non-traditional retailer would occur about once in a million times in random sampling.

Because these sales so greatly exceed the monthly expected sales range to meet legitimate demand, I further find that most of Respondent's products were diverted into the illicit manufacture of methamphetamine. Moreover, even if these stores sold Respondent's products at a lower retail price (such as the price found in *Wild West Wholesale* for a smaller quantity), I would still find that Respondent's sales were so excessive that its products were diverted.

Discussion

Under 21 U.S.C. 823(h), an applicant to distribute list I chemicals is entitled to be registered unless the registration would be ''inconsistent with the public interest.'' In making this determination, Congress directed that I consider the following factors:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Id.

''These factors are considered in the disjunctive.'' *Joy's Ideas,* 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for registration should be denied. *See, e.g., David M. Starr,* 71 FR 39367 (2006); *Energy Outlet,* 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

In this case, I conclude that an analysis of factors one, two, and three is not necessary. I hold that factors four (Respondent's experience) and five (Respondent's intent to distribute to the non-traditional market) conclusively establish that granting Respondent's application would be inconsistent with the public interest.

Factors Four and Five—The Registrant's Past Experience in the Distribution of Chemicals and Other Factors Relevant To and Consistent With Public Health and Safety

As found above, the illicit manufacture and abuse of methamphetamine have had pernicious effects on families and communities throughout the nation. Cutting off the supply source of methamphetamine traffickers is of critical importance in protecting the public from the devastation wreaked by this drug.

While combination ephedrine products have a legitimate medical use as a bronchodilator to treat asthma, DEA orders have established that convenience stores and gas-stations constitute the non-traditional retail market for legitimate consumers of products containing ephedrine. *See, e.g., Tri-County Bait Distributors,* 71 FR

[3] All of the data used in the sampling were for sixty-count bottles. Respondent also sold ephedrine packets to several of these entities.

[4] These figures were either rounded up or down to the nearest dollar.

at 52161; *D & S Sales,* 71 FR at 37609; *Branex, Inc.,* 69 FR at 8690–92. DEA has further found that there is a substantial risk of diversion of list I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See, e.g., Joy's Ideas,* 70 FR at 33199 (finding that the risk of diversion was ''real'' and ''substantial''); *Jay Enterprises, Inc.,* 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' should application be granted).

DEA orders thus recognize that the sale of combination ephedrine (and pseudoephedrine) products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. *See, e.g., Joey Enterprises, Inc.,* 70 FR 76866, 76867 (2005). As *Joey Enterprises* explains, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' *Id. See also TNT Distributors,* 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores'').[5] Here, nearly all of Respondent's customers are convenience stores and gas stations, which are non-traditional retailers of list I chemical products; DEA has repeatedly found that these entities are conduits for the diversion of list I products into the illicit manufacture of methamphetamine.

Relatedly, DEA has repeatedly revoked the registrations of list I chemical distributors who supplied the non-traditional market for selling quantities of products that clearly exceeded legitimate demand and were likely diverted into the illicit manufacture of methamphetamine. *See T. Young Associates, Inc.,* 71 FR at 60572–73; *D & S Sales,* 71 FR at 37611–12; *Joy's sIdeas,* 70 FR at 33198–99; *Branex, Inc.,* 69 FR at 8693–96. Most significantly, the investigative file establishes that Respondent distributed combination ephedrine products in quantities that far exceeded legitimate consumer demand for these products as an asthma treatment.

The representative sampling of Respondent's customers showed that the lowest average estimated monthly retail sale per store was $ 1045; four of the stores had average monthly retail sales of more than $ 1500. Moreover, the average estimated monthly sale for all stores in the sample was $ 1414. These figures grossly exceed the monthly expected sales range of $ 0 to $ 25 (with an average of $ 12.58) by convenience stores to meet legitimate demand for these products. *See T. Young,* 71 FR at 60568; *D & S Sales,* 71 FR at 37609.

Indeed, as found above, a monthly retail sale of $ 60 of ephedrine products at a convenience store should ''occur about once in a million times in random sampling.'' *T. Young,* 71 FR at 60568. The $ 1414 average monthly retail sale for all nine stores is more than twenty-three times this amount. Moreover, this figure is an average for these stores over a five-month period. It is thus considerably more improbable than a one in a million probability that Respondent's products were being purchased to meet legitimate demand.

I therefore conclude that the only plausible explanation for these extraordinary sales is that Respondent's products were being diverted into the illicit manufacture of methamphetamine. *See T. Young,* 71 FR at 60572; *D & S Sales,* 71 FR at 37611 (finding diversion occurred ''[g]iven the near impossibility that * * * sales were the result of legitimate demand''); *Joy's Ideas,* 70 FR at 33198 (finding diversion occurred in the absence of ''a plausible explanation in the record for this deviation from the expected norm''). Moreover, because the purpose of the CSA's registration provisions is to protect the public interest, it is irrelevant whether Respondent knew that its products were being diverted. *T. Young,* 71 FR at 60572.

''The diversion of list I chemicals into the illicit manufacture of methamphetamine poses the same threat to public health and safety whether a registrant sell the products knowing they will be diverted, sells them with a reckless disregard for the diversion, or sells them being totally unaware that the products were being diverted.'' *Id.* (citing *D & S Sales,* 71 FR at 37610–12, & *Joy's Ideas,* 70 FR at 33198). As I have previously noted (albeit in a revocation proceeding), the public interest standard does not require that the Government prove that a registrant acted with any particular *mens rea* in order to support a finding that diversion has occurred. *T. Young,* 71 FR at 60572. The same rule applies to an applicant who has previously engaged in the distribution of list I products. Accordingly, where, as here, substantial quantities of products have been diverted, adverse findings are warranted under factors four and five even if Respondent's owner was unaware that its products were being diverted. I therefore hold that granting Respondent's application would be inconsistent with the public interest.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), as well as 28 CFR 0.100(b) & 0.104, I order that the application of MK Distributing, Inc., for a DEA Certificate of Registration as a distributor of list I chemicals, be, and it hereby is, denied. This order is effective April 5, 2007.

Dated: February 23, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–3857 Filed 3–5–07; 8:45 am]

BILLING CODE 4410–09–P

[5] *See OTC Distribution Co.,* 68 FR 70538, 70541 (2003) (noting ''over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in eight-month period distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.''); *MDI Pharmaceuticals,* 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacturer of methamphetamine'').

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721) and Notice of Law Enforcement Officer's Death (CA–722). A copy of the proposed

information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 7, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail: *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA). The Act provides that non-Federal law enforcement officers and/or their survivors injured or killed under certain circumstances are entitled to benefits of the Act to the same extent as employees in the Federal government. The Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721) and the Notice of Law Enforcement Officer's Death (CA–722) are the forms used by non-Federal law enforcement officers and their survivors to claim compensation under FECA. This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information to determine eligibility for benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721), Notice of Law Enforcement Officer's Death (CA–722).

OMB Number: 1215–0116.

Agency Number: CA–721 and CA–722.

Affected Public: Individuals or Households; Business or other for-profit; State, Local or Tribal Government.

Total Respondents: 30.

Total Annual Responses: 30.

Average Time per Response: 60 to 90 minutes.

Estimated Total Burden Hours: 40.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $12.60.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–3865 Filed 3–5–07; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Survivor's Form for Benefits (CM–912). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 7, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

This collection of information is required to administer the benefit payment provisions of the Black Lung Act for survivors of deceased miners. Completion of this form constitutes the application for benefits by survivors and assists in determining the survivor's entitlement to benefits. Form CM–912 is authorized for use by the Black Lung Benefits Act 30 U.S.C. 901, et seq., 20 CFR 410.221 and CFR 725.304 and is used to gather information from a survivor of a miner to determine if the survivor is entitled to benefits. This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to gather information to determine eligibility for benefits of a survivor of a Black Lung Act beneficiary.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Survivor's Form for Benefits.

OMB Number: 1215–0069.

Agency Number: CM–912.

Affected Public: Individuals or households.

Total Respondents: 2,000.

Total Annual Responses: 2,000.

Average Time per Response: 8 minutes.

Estimated Total Burden Hours: 267.

Frequency: One time.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $672.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–3866 Filed 3–5–07; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Energy Employees Occupational Illness Compensation Program Act Forms (EE–1 English and EE–1 Spanish, EE–2 English and EE–2 Spanish, EE–3 English and EE–3 Spanish, EE–4 English and EE–4 Spanish, EE–7 English and EE–7 Spanish, EE–8, EE–9, EE–10, EE–12, EE–13, EE–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 7, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) is the primary agency responsible for the administration of the Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.* The Act provides for timely payment of compensation to covered employees and, where applicable, survivors of such employees, who sustained either ''occupational illnesses'' or ''covered Illnesses'' incurred in the performance of duty for the Department of Energy and certain of its contractors and subcontractors. The Act sets forth eligibility criteria for claimants for compensation under Part B and Part E of the Act, and outlines the various elements of compensation payable from the Fund established by the Act. The information collected is used to obtain demographic, factual and medical information needed to determine entitlement to benefits under the EEOICPA. Before benefits may be paid, the case files must contain medical and employment evidence showing the claimant's eligibility. The eight forms listed below are reporting requirements under the Act and are required to determine a claimant's eligibility for compensation and to receive benefits under the EEOICPA. The forms reporting requirements are: EE–1, Claim for Benefits Under Energy Employees Occupational Illness Compensation Program Act is used to file notice of claim under Part B and/or E of the EEOICPA, and is to be completed by the living current or former employee; EE–2, Claim for Survivor Benefits Under Energy Employees Occupational Illness Compensation Program Act is used by the survivor of a covered employee to file notice of claim under Part B and/or E of the EEOICPA; EE–3, Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act is used to gather factual information regarding the employee's work history; EE–4, Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act is used to support the claimant's employment history by affidavit; EE–7, Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act informs an employee, survivor or physician of the medical evidence needed to establish a diagnosis of a covered condition; EE–8, Letter to Claimant is sent with enclosure EN–8 to obtain information on the employees' smoking history when lung cancer due to radiation is claimed; EE–9, Letter to Claimant is sent with enclosure EN–9 to obtain information concerning the race or ethnicity of the employee when skin cancer is claimed; EE–10, Claim for Additional Wage-Loss and/or Impairment Under the EEOICPA is used by the covered Part E employee who has received an award for wage-loss and/or impairment due to ''covered illness'' to claim for subsequent calendar year of wage-loss and/or any additional impairment; EE–12, Letter to covered Part B and E employees receiving medical benefits, sent with enclosure EN–12 and is used to collect updated information about settlements or awards in litigation and state workers' compensation benefits that impact continuing entitlement; EE–13, Letter to state workers' compensation authorities, sent with enclosure EN–13 and is used to identify covered Part E employees receiving medical benefits who have also been awarded state workers' compensation for their covered illnesses; and EE–20, Letter to Claimant is sent with enclosure EN–20 to verify acceptance of payment on approved claims. This information collection is currently approved for use through August 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the revision of this information collection in order to carry out its responsibility to determine a claimant's eligibility for compensation under the EEOICPA.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Energy Employee Occupational Illness Compensation Act Forms (various).

OMB Number: 1215–0197.

Agency Number: EE–1 English and EE–1 Spanish, EE–2 English and EE–2 Spanish, EE–3 English and EE–3 Spanish, EE–4 English and EE–4 Spanish, EE–7 English and EE–7 Spanish, EE–8, EE–9, EE–10, EE–12, EE–13, EE–20.

Affected Public: Individuals or households; Business or other for-profit.

Total Respondents: 78,587.

Total Responses: 79,062.

Time per Response: 5 minutes to 8 hours.

Frequency: As needed.

Estimated Total Burden Hours: 35,447.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $4,419.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–3867 Filed 3–5–07; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[07–017]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award contracts with an estimated value of more than $500,000 for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, bids and proposals for contracts with an estimated value more than $500,000.

OMB Number: 2700–0085.

Type of Review: Revision of currently approved collection.

Affected Public: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 1148.

Estimated Annual Responses: 1148.

Estimated Time Per Response: 600 hours.

Estimated Total Annual Burden Hours: 688,800.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed 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, including automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–3858 Filed 3–5–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[07–018]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to effectively manage and administer contracts with an estimated value more than $500,000 for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, reports required for contracts with an estimated value more than $500,000.

OMB Number: 2700–0089.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; not-for-profit institutions; and State, local or Tribal government.

Estimated Number of Respondents: 1,700.

Estimated Annual Responses: 93,500.

Estimated Time Per Response: 7 hours.

Estimated Total Annual Burden Hours: 654,500.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed 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, including automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Acting Deputy Chief Information Officer.

[FR Doc. E7–3859 Filed 3–5–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[07–019]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award Purchase Orders and to use bank cards for required goods and services with an estimated value less than $100,000 in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, Purchase Orders for goods and services with an estimated value less than $100,000.

OMB Number: 2700–0086.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 137,086.

Estimated Annual Responses: 137,086.

Estimated Time Per Response: 0.25 hours.

Estimated Total Annual Burden Hours: 43,245.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed 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, including automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–3860 Filed 3–5–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[07–020]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA;

Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award contracts with an estimated value less than $500,000 for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, bids and proposals for contracts with an estimated value less than $500,000.

OMB Number: 2700–0087.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 3,772.

Estimated Annual Responses: 3,772.

Estimated Time Per Response: 325 hours.

Estimated Total Annual Burden Hours: 1,225,900.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed 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, including automated collection techniques or the use of other forms of information technology.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–3861 Filed 3–5–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[07–021]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information is needed to guide implementation of GLOBE (Global Learning and Observations to Benefit the Environment) based on feedback from participating teachers, students, and partners in order to help meet the Program's goal of improving student achievement in mathematics and science.

II. Method of Collection

The GLOBE Partner survey is Web-based on-line instrument. The survey gathers data on all activities related to GLOBE implementation for the year prior to administration of the survey.

III. Data

Title: GLOBE Program Evaluation.

OMB Number: 2700–0114.

Type of review: Extension of currently approved collection.

Affected Public: State, Local, or Tribal Government; individuals or households; and not-for-profit institutions.

Number of Respondents: 258.

Responses Per Respondent: 1.

Annual Responses: 258.

Hours Per Request: 2.

Annual Burden Hours: 516.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed 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, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary L. Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–3862 Filed 3–5–07; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transients

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 2007–01 to all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operation and have certified that fuel has been removed from the reactor vessel. The NRC is issuing this GL to:

(1) Inform licensees that the failure of certain power cables can affect the functionality of multiple accident mitigation systems or cause plant transients,

(2) Inform licensees that in the absence of adequate monitoring of cable insulation, equipment could fail abruptly during service, causing plant transients or disabling accident mitigation systems,

(3) Ask licensees to provide information on the monitoring of

inaccessible or underground electrical cables, and

Require that addressees submit a written response to the NRC in accordance with NRC regulations in Title 10 of the Code of Federal Regulations Section 50.54(f).

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Number ML070470317.

DATES: The GL was issued on February 7, 2007.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Kimberley Corp, (301) 415–1091 or by email kar1@nrc.gov or Matthew McConnell at (301) 415–1597 or e-mail mxm4@nrc.gov.

SUPPLEMENTARY INFORMATION: NRC Generic Letter 2007–01 may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* The ADAMS number for the GL is ML070360665.

If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 20th day of February 2007.

For The Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E7–3854 Filed 3–5–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 177th meeting on March 20–22, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, March 20, 2007

11 a.m.–11:05 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

11:05 a.m.–12 p.m.: Savannah River National Laboratory (SRNL) Workshop on Cementitious Materials Used in Waste Determination Activities (Open)—Professor Barry Scheetz from the Pennsylvania State University will brief the Committee on a SRNL-sponsored workshop that examined the use of cementitious materials in radioactive waste management applications. This workshop was held on December 12–14, 2006, in Aiken, South Carolina.

1 p.m.–2:30 p.m.: Stakeholder Views on Moderator Exclusion (Open)—Representatives from the Nuclear Energy Institute (NEI), the Electric Power Research Institute (EPRI), and H322 Consulting LLC will brief the Committee on their views on the moderator exclusion issue in transportation canisters for spent nuclear fuel.

2:45 p.m.–3:30 p.m.: Idaho National Laboratory (INL) / U.S. Department of Energy (DOE) Views on Moderator Exclusion (Open)—An INL/DOE representative will brief the Committee on an upcoming license application requesting NRC approval for the DOE Standardized Spent Nuclear Fuel Canister relying on the use of moderator exclusion.

3:30 p.m.–4:30 p.m.: Round Table Discussion on Moderator Exclusion (Open)—ACNW Member Ruth Weiner will lead a follow up discussion with the previous presenters and representatives from NRC's Office of Nuclear Materials Safety and Safeguards (NMSS), Division of Spent Fuel Storage and Transportation (SFST), on the technical and regulatory issues surrounding the moderator exclusion issue.

4:30 p.m.–5:30 p.m.: ACNW Meeting with NRC Commissioner Gregory B. Jaczko (Open)—Commissioner Jaczko will address the Committee on current topics and issues of common interest.

Wednesday, March 21, 2007

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10 a.m.: Update by the U.S. Department of Energy (DOE) on the Proposed Yucca Mountain Repository Design (Open)—A Department representative will update the Committee on the status of DOE design activities for surface facilities for the proposed geologic repository. Briefing is also expected to examine repository design options for spent nuclear fuel handling in light of the TAD (transportation-aging-disposal) canister decision-making.

10:15 a.m.–12 p.m.: ACNW Action Plan for Fiscal Years 2007 and 2008 (Open)—The Committee will discuss and approve its Action Plan for Fiscal Years 2007 and 2008.

1 p.m.–2 p.m.: Briefing on Shieldalloy, New Jersey, Site Decommissioning Plan (Open)—Staff from the Office of Federal and State Materials and Environmental Management Programs (FSME) will brief the Committee on the Decommissioning Plan for the Shieldalloy Metallurgical Corporation's complex decommissioning site.

2 p.m.–3 p.m.: Updated EPRI Response on Potential Igneous Event at Yucca Mountain (Open)—NRC staff recently reviewed reports prepared by EPRI on magma interactions with the proposed Yucca Mountain repository. EPRI representatives will provide the Committee with their comments on the staff's review.

3:15 p.m.–5:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include content of future letters and scope of future Committee Meetings.

Thursday, March 22, 2007

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–11:30 a.m.: ACNW White Paper on Volcanism (Open)—Followup discussion from February working group meeting; general review of observations, revisions, and summary conclusions for the White Paper on Igneous Activity at Yucca Mountain.

12:30 p.m.–5:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include the ACNW Action Plan as well as future Committee Meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 12, 2006 (71 FR 60196). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic

recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Informatition regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Dias.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: February 28, 2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–3863 Filed 3–5–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on March 20, 2007, 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 ACNW, 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:

Tuesday, March 20, 2007—8:30 a.m.–10:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. 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.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Antonio F. Dias (Telephone: 301/415–6805) between 8:15 a.m. and 5 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 8:15 a.m. and 5 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: February 27, 2007.

Antonio F. Dias,

Acting Branch Chief, ACNW.

[FR Doc. E7–3864 Filed 3–5–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of March 5, 12, 19, 26, April 2, 9, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 5, 2007

Monday, March 5, 2007

1 p.m.
Meeting with Department of Energy on New Reactor Issues (Public Meeting).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, March 7, 2007

9:30 a.m.
Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting). (Contact: Miriam Cohen, 301 415–0260.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1 p.m.
Discussion of Security Issues (Closed—Ex. 1 and 3).

Thursday, March 8, 2007

9:55 a.m.
Affirmation Session (Public Meeting) (Tentative)
a. Exelon Generation Company, LLC (Early Site Permit for Clinton ESP) (Tentative).

10 a.m.
Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS) Programs, Performance, and Plans (Public Meeting). (Contact: Gene Peters, 301 415–5248.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1 p.m.
Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting). (Contact: Reginald Mitchell, 301 415–1275.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 12, 2007—Tentative

There are no meetings scheduled for the Week of March 12, 2007.

Week of March 19, 2007—Tentative

Tuesday, March 20, 2007

1:30 p.m.
Briefing on Office of Information Services (OIS) Programs, Performance, and Plans (Public Meeting). (Contact: Edward Baker, 301 415–8700.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, March 22, 2007

12:55 p.m.
Affirmation Session (Public Meeting) (Tentative).
a. Consumers Energy Company, *et al.* (Palisades Nuclear Plant); License Transfer Application (Tentative).

Week of March 26, 2007—Tentative

Thursday, March 29, 2007

9:30 a.m.
Discussion of Management Issues (Closed—Ex. 2).
1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1, 3, & 9).

Week of April 2, 2007—Tentative

There are no meetings scheduled for the Week of April 2, 2007.

Week of April 9, 2007—Tentative

There are no meetings scheduled for the Week of April 9, 2007.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 1, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–1062 Filed 3–2–07; 1:27 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; License Nos. NPF–76 and NPF–80]

STP Nuclear Operating Company; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a director's decision with regard to a petition dated May 16, 2006, filed by Mr. Glenn Adler on behalf of Service Employees International Union, hereinafter referred to as the Petitioner. The petition was supplemented by letter dated June 26, 2006, and provided to the U.S. Nuclear Regulatory Commission (NRC) during a meeting with the agency's petition review board (PRB) on June 27, 2006. Transcripts of the meeting are available, as an attachment to the PRB meeting summary, via the Agencywide Documents Access and Management System (ADAMS) on the agency's Web site at *http://www.nrc.gov/reading-rm/adams.html* and for inspection at the NRC Public Document Room, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The petition concerns the operation of the South Texas Project (STP) Electric Generating Station, Units 1 and 2.

The Petitioner requested that the NRC issue a demand for information (DFI) to STP Nuclear Operating Company (STPNOC), licensee for STP, to provide the results of assessments of the safety-conscious work environment (SCWE) at STP conducted since January 1, 2004; summaries of action plans and results of actions to remedy the problems revealed by the assessments, including documents mentioned at an August 2005 meeting convened to discuss the STP SCWE; summaries of action plans and results of efforts to remedy problems revealed by such assessments in 2001 and 2003; and all correspondence between the NRC, STPNOC, and Wackenhut Corporation concerning the 2001, 2003, and 2005 comprehensive cultural surveys (CCAs).

As the basis for the petition, the Petitioner stated that, in 1998 the NRC found that STP had violated Federal law by subjecting four employees to a ''hostile work environment'' after the employees raised safety concerns. The Petitioner noted that the NRC issued an order requiring STP to hire an independent contractor to conduct periodic CCAs.

The Petitioner stated that the licensee hired Synergy Consulting Services Corporation. The Wackenhut Corporation took over security at STP in July 2001, after winning a 3-year contract for security, with an option for 2 additional years. The Petitioner further noted that in the 2001 and 2003 CCAs, Wackenhut scored poorly on independent surveys assessing the STPNOC nuclear safety culture, SCWE, general culture and work environment, leadership, management, and supervisory skills and practices.

The Petitioner stated that, despite apparently repeated efforts by STPNOC to remedy the poor performance of Wackenhut, a more recent survey revealed that Wackenhut's performance problems continued, as indicated in the 2005 CCA, and that the STPNOC action plans apparently were not successful with respect to Wackenhut and other entities.

The Petitioner stated that obtaining the documents it identified will facilitate the NRC to be better informed about improvement in the licensee's SCWE at STPNOC. In addition, the NRC will be better able to assess the effectiveness of previous steps taken with Wackenhut and other entities for whom problems persisted, despite repeated efforts to remedy them.

On June 27, 2006, the Petitioner and the licensee's attorney met with the staff's PRB. The meeting gave the Petitioner and the licensee's attorney an opportunity to provide additional information and to clarify issues raised in the petition. The summary of the meeting and its transcript are available in ADAMS, as stated above.

On November 21, 2006, the NRC sent a copy of the proposed director's decision to the Petitioner and the licensee for comment. At the request of the Petitioner, the NRC extended the end of the comment period from December 21, 2006, to January 12, 2007. However, the NRC staff did not receive any comments. The NRC has included the latest update of the results of its ongoing oversight at STP, and made some editorial changes to the text of this director's decision.

The director's decision [DD–07–01] explains the reasons for this decision pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 2.206, the complete text of which is available on the agency's Web site via ADAMS and at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room).

The NRC staff denied the Petitioner's request for a DFI to STPNOC. Issuance of a DFI is not warranted because the NRC has already reviewed and has ready access to all the information for which the Petitioner had requested a DFI. NRC has also denied your request to docket the documents for which you requested DFI. The NRC will docket only documents which are submitted to the NRC. However, NRC is denying your request for a DFI, and NRC did not require submission of the documents in its Confirmatory Order Modifying License (Effective Immediately) of June 9, 1998. Instead, STPNOC maintains the documents for ready access by the NRC at the site.

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 24th day of February 2007.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E7–3827 Filed 3–5–07; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

Board Votes To Close February 27, 2007 Meeting

By telephone vote on February 27, 2007, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

Item Considered: Postal Regulatory Commission Opinion and Recommended Decision in Docket No. R2006–1, Postal Rate and Fee Changes.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Wendy A. Hocking, at (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–1066 Filed 3–2–07; 1:58 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55367; File No. 4–529]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between the International Securities Exchange, LLC and the National Association of Securities Dealers, Inc.

February 27, 2007.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Sections 17(d) [1] and 11A(a)(3)(B) [2] of the Securities Exchange Act of 1934 (''Act''), granting approval and declaring effective an amended and restated plan for the allocation of regulatory responsibilities (''Plan'') that was filed pursuant to Rule 17d–2 under the Act [3] by the International Securities Exchange, LLC (''ISE'') and the National Association of Securities Dealers, Inc. (''NASD'') (together with ISE, the ''Parties'').[4]

Accordingly, NASD shall assume, in addition to the regulatory responsibility it has under the Act, the regulatory responsibilities allocated to it under the Plan. At the same time, ISE is relieved of those regulatory responsibilities allocated to NASD under the Plan.

I. Introduction

Section 19(g)(1) of the Act,[5] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or registered securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) [6] or 19(g)(2) [7] of the Act. Section 17(d)(1) of the Act [8] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO (''common members'').[9] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 [10] and Rule 17d–2 [11] under the Act. Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Upon effectiveness of a plan filed pursuant to Rule 17d–2, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

On January 17, 2007, the Commission published notice of the Plan filed by ISE and NASD.[12] The Commission received no comments on the Plan. The Plan is intended to replace and supersede the current 17d–2 plan between NASD and ISE and all prior amendments thereto in their entirety,[13] and is intended to

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

[4] *See* Securities Exchange Act Release No. 55057 (January 8, 2007), 72 FR 2040 (January 17, 2007) (''Notice'').

[5] 15 U.S.C. 78s(g)(1).

[6] 15 U.S.C. 78q(d).

[7] 15 U.S.C. 78s(g)(2).

[8] 15 U.S.C. 78q(d)(1).

[9] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[10] 17 CFR 240.17d–1. Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.

[11] 17 CFR 240.17d–2.

[12] *See* Notice, *supra* note 4.

[13] The Parties currently operate pursuant to a 17d–2 plan in which NASD has assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the ''current NASD–ISE 17d–2 plan''). *See* Securities Exchange Act Release Nos. 42668 (April 11, 2000), 65 FR 21048 (April 19, 2000) (File No. 4–431)

Continued

reduce regulatory duplication for firms that are common members of ISE and NASD. The text of the Plan allocates regulatory responsibilities among the Parties with respect to common members. Included in the Plan is an attachment (the ''ISE Certification of Common Rules,'' referred to herein as the ''Certification'') that lists every ISE rule and federal securities law and rule and regulation thereunder for which, under the Plan, NASD would bear responsibility for examining, and enforcing compliance by, common members.

II. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act [14] and Rule 17d–2(c) thereunder [15] in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan could reduce unnecessary regulatory duplication by allocating to NASD certain responsibilities for common members that would otherwise be performed by both ISE and NASD. Accordingly, the proposed Plan promotes efficiency by reducing costs to common members. Furthermore, because ISE and NASD will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, ISE and NASD have allocated regulatory responsibility for all ISE rules that are substantially similar to NASD rules in that ISE's rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a dual member's activity, conduct, or output in relation to such rule (''Common Rules''). These Common Rules are specifically listed in the Certification. In addition, under the Plan, the NASD would assume regulatory responsibility for any provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification.[16]

The Plan further provides that NASD shall not assume regulatory responsibility, and ISE will retain full responsibility, for: (1) Surveillance and enforcement with respect to trading activities or practices involving ISE's own marketplace; (2) registration pursuant to ISE's applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); (3) ISE's duties as a DEA under Rule 17d–1 of the Act;[17] and (4) any rules of ISE that do not qualify as Common Rules, except that NASD shall be responsible for such rules with respect to any ISE member that operates as a facility, acts as an outbound router for ISE, and is a member of NASD (''Router Member'').[18] Apparent violations of any ISE rules by any Router Member will be processed by NASD, and NASD will conduct any enforcement proceedings. The effect of these provisions is that regulatory oversight and enforcement responsibilities for any Router Member will be vested with NASD. These provisions should help avoid any potential conflicts of interest that could arise if ISE was primarily responsible for regulating its affiliated outbound router.[19]

According to the Plan, ISE will perform a review of the Certification, at least annually, or more frequently if required by changes in either the rules of ISE or NASD, to add ISE rules not included on the then-current list of Common Rules that are substantially similar to NASD rules (*i.e.*, new rules that qualify as Common Rules or existing rules that have been amended so that they now qualify as Common Rules); delete ISE rules included in the then-current list of Common Rules that are no longer substantially similar to NASD rules (*i.e.*, amended rules that cease to be Common Rules); and confirm that the remaining rules on the list of Common Rules continue to be ISE rules that are substantially similar to NASD rules. NASD will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, ISE will also provide NASD with a current list of dual members and shall update the list no less frequently than once each quarter.

The Commission is hereby declaring effective and approving a plan that, among other things, allocates regulatory responsibility to NASD for the oversight and enforcement of all ISE rules that are substantially similar to the rules of NASD for common members of ISE and NASD. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to ISE rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should ISE or NASD decide to add an ISE rule to the Certification that is not substantially similar to an NASD rule; delete an ISE rule from the Certification that is substantially similar to an NASD rule; or leave on the Certification an ISE rule that is no longer substantially similar to an NASD rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act and noticed for public comment.[20]

The Plan also permits ISE and NASD to terminate the Plan, subject to notice, for various reasons. The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d–2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.[21]

III. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–529. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the Plan in File No. 4–529, between ISE and NASD, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

(notice of filing); 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (File No. 4–431) (approval order).

[14] 15 U.S.C. 78q(d).

[15] 17 CFR 240.17d–2(c).

[16] As proposed currently, however, there are no federal securities rules listed on the Certification. Therefore, at present, ISE has not been relieved of any regulatory responsibilities, pursuant to the Plan, for any provisions of the federal securities laws and the rules and regulations thereunder.

[17] 17 CFR 240.17d–1.

[18] Currently, ISE Route LLC is the only Router Member.

[19] In a separate proposed rule change relating to the adoption of rules to govern its electronic trading system for equities, ISE represented that it would enter into a 17d–2 agreement with NASD to delegate to NASD all regulatory oversight and enforcement responsibilities with respect to the ISE's outbound routing facility pursuant to applicable laws (*i.e.*, the Plan). *See* Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650, 58654 (October 4, 2006) (SR–ISE–2006–48).

[20] The Commission also notes that the addition to (or eventual deletion from) the Certification of any federal securities laws, rules, and regulations for which NASD would bear responsibility under the Plan for examining, and enforcing compliance by, common members, would constitute an amendment to the Plan.

[21] The Commission notes that paragraphs 4 and 13 of the Plan reflect the fact that NASD's responsibilities under the Plan will continue in effect until the Commission approves the termination of the Plan.

It is therefore ordered that ISE is relieved of those responsibilities allocated to the NASD under the Plan in File No. 4–529.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3837 Filed 3–5–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55361; File No. SR–NYSE–2006–28]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 2 Thereto Relating to NYSE Rules 134 and 411

February 27, 2007.

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 May 2, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE. NYSE filed Amendment No. 1 to the proposed rule change on September 22, 2006.[3] NYSE filed Amendment No. 2 to the proposed rule change on February 20, 2007.[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 proposed rule change consists of amendments to NYSE Rules 134 (Differences and Omissions-Cleared Transactions) and 411 (Erroneous Reports). The proposed amendments seek to incorporate recognized trading errors into NYSE Rule 134. The Exchange further seeks to expand the use of the Floor broker's error account to include certain situations involving ''not held'' orders. Furthermore, the proposed rule change would amend NYSE Rule 411 to allow erroneous reports of an execution involving an incorrect security, incorrect side of the market, incorrect price or whether an execution actually took place, to be treated as an erroneous trade.

The text of the proposed rule change appears below. Proposed new language is *italicized;* proposed deletions are in [brackets].[5]

* * * * *

Rule 134.

Differences and Omissions-Cleared Transactions

(''QTs'')

* * * * *

(d)

* * * * *

(iii) Records as to all errors shall *be contemporaneous to the error and* be maintained by the member or his or her member organization. Such records shall include the audit trail data elements prescribed in Rule 132, as well as the nature and amount of the error, the means whereby the member resolved the error with the member or member organization that cleared the error trade on the member's behalf, the aggregate amount of liability that the member has incurred and has outstanding, as of the time each such error trade entry is recorded, and such other information as the Exchange may from time to time require.

* * * * *

(g) For the purposes of this rule an ''error'' occurs as described in this subsection (g) and (h) below. When an order is executed outside of the customer instructions as entered in the electronic order tracking system of the Exchange pursuant to Rule 123(e). This includes, but is not limited to:

(i) When a held or a not held order is executed in:

(a) The wrong security; or

(b) on the wrong side of the market; or

(c) at a price outside the limit price of the order; or

(d) is over bought or over sold; or

(e) duplicates an execution.

(ii) When an error is committed in the execution of a not held order as it relates to symbol, side, or price as noted in (i) above, which causes such not held order to remain unexecuted.

(h) When: (i) There is a failure to execute a held order when market conditions permitted; or (ii) when a not held order remains unexecuted, in whole or in part, due to the order being lost or misplaced, or as a result of a system malfunction.

(i) The Floor broker must maintain a signed, time-stamped record, including supporting documentation of such error.

(j)(i) For the types of errors referred to in (h)(ii) above, such record and supporting documents must be provided to the Exchange Division of Market Surveillance prior to the opening of the Floor on the next trade date following the error.

(ii) With respect to the errors described in (h)(ii) above, the Floor broker may execute the order in alignment with half the volume of each Exchange tape print up to the size of the order between the time that the order was entered and the time that the Floor Broker realized that the order was lost, misplaced or not executed as a result of a system malfunction. If executing half the volume of an order based on the Exchange tape print would result in more than a unit of trading, but not a multiple thereof (such as 150 shares), the customer would be entitled to the nearest full unit of shares rounded down (such as 100 shares).

(iii) If the Floor broker fails to provide sufficient documentation, (which must include, but is not limited to, the date and time of the error, the date and time the error was discovered, the size of the error, the stock in which the error occurred, the original instructions, the names of all involved parties including the client and any upstairs trader, a detailed narrative of how the error occurred, detail narrative of discussions with relevant parties, the steps taken to correct the error and the ultimate resolution of the error) prior to the next trade date following the error, the Floor broker is prohibited from relying on the provisions of (j)(ii) above.

* * * * *

Rule 411.

Erroneous Reports

(a)

* * * * *

(iii) *Except as provided in (iv) below,* [A] *a* report shall not be binding and must be rescinded if an order was not actually executed but was in error reported to have been executed; an order which was executed, but in error reported as not executed, shall be binding; provided, however, when a member who is on the Floor reports in good faith the execution of an order entrusted to him by another member or

[22] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes the original filing in its entirety.

[4] Amendment No. 2 supersedes Amendment No. 1 in its entirety.

[5] The Exchange inadvertently failed to identify the numbering of Rule 134(g)(i) and (ii) as proposed new text. For clarity, this numbering has been italicized herein. The Exchange has committed to file an amendment reflecting the fact that this section numbering is new text prior to Commission approval of the proposed rule change. Telephone conversation between Deanna Logan, Director, Office of the General Counsel, NYSE and David Michehl, Special Counsel, Commission, Division of Market Regulation, on February 21, 2007.

member organization and the other party to that transaction does not know it, the member or member organization to whom such report was rendered and the member Floor broker who made the report shall treat the transaction as made for the account of the member who made the report, or the account of his member organization, if the price and size of the transaction were within the price and volume of transactions in the security at the time that the member who made the report believed he had executed the order. A detailed memorandum of each such transaction shall be prepared and filed with the Exchange by the member assuming the transaction.

(iv) A Floor broker who fails to execute a not held order because of the Floor broker's error as to symbol, side or price, but reports to the customer the order had been executed in accordance with the customer's instructions, may treat the terms of the execution report as though they were the terms of a trade, provided:

(1) The price and size of the erroneous report are within the range of prices and sizes in the subject security reported on the Exchange portion of the Consolidated Tape on the day in which the order was erroneously reported;

(2) the Floor broker reports the error to the customer, and whether the error was favorable or unfavorable to the customer;

(3) the Floor broker documents, on a trade-by-trade basis, the name of individual authorized to accept the erroneous report for the customer, the amount of the error, and whether the error was in the customer's favor;

(4) the Floor broker treats the erroneous report as though it were an erroneous trade and his or her error account or the error account of the member organization becomes the opposite side to the report; and

(5) the Floor broker assumes any loss occasioned by the erroneous report, and pays any profit to the New York Stock Exchange Foundation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing seeks to codify current recognized trading errors and to expand the use of the Floor broker's error account to include certain situations involving not held[6] orders. NYSE Rules 134 and 411, related to trading errors and erroneous reports, currently require members who ''assume or acquire'' a position as a result of an error when handling transactions for a customer to report such position in their designated error account. Pursuant to Information Memoranda 01–38, 02–07, 02–19, and 06–34, the Exchange currently interprets an error to be a mistake in the execution of the order.

Current Policy and Procedure for Recognized Trading Errors. At present, recognized trading errors fall into two categories. The first category applies to held[7] and not held orders and includes trades that are mistakenly executed outside the written order instructions. These types of errors encompass situations where the transaction was incorrectly executed: (i) In the wrong security; (ii) on the wrong side of the market; (iii) outside of the price instructions; (iv) for a quantity greater than specified in the instructions; or (v) duplicating a prior execution of the same original order. The second category of trading errors applies only to held orders and involves situations where a held order was executable in the prevailing market; however, the member failed to take advantage of the opportunity to execute the order at that time.

Under the current rules[8] and interpretations[9], a Floor broker's failure to execute a not held order when such not held order was executable in the prevailing market is not an error and the Floor broker cannot use his or her error account to issue reports at prices that the customer would have been entitled to, had the Floor broker executed the not held order in the prevailing market.

Similar to the second category of recognized trading errors noted above, that apply only to held orders, there can be instances where a not held order is accepted from a customer but is lost or misplaced or remains unexecuted as a result of a system malfunction and thus the Floor broker fails to execute the not held order when the order would have been executable in the prevailing market. If at the time the Floor broker identifies the execution failure, the customer's order can be executed in the market at an equal or better price than the customer could have received had the order been executed in the prevailing market, then the Floor broker will execute the order. In the event the market is adverse to the customer's interest at the time the error is identified, under the current rules and interpretation,[10] the remedy is to have the Floor broker issue a difference check[11] or offer a commission reduction to address any disadvantage to the customer.

In practice, the issuance of a difference check or commission adjustment to resolve any monetary disadvantage suffered by the customer as a result of the Floor broker's failure to execute a not held order due to administrative mistake or system malfunction has proved cumbersome. Many institutional investors do not want the administrative burden of processing a difference check or commission adjustment. More importantly, the issuance of the difference check or commission adjustment is ultimately not in the best interest of the customer because the administrative cost associated with the processing of the difference check or commission adjustment is ultimately borne by the customer and thus the remedy does not serve to make the customer whole.

Proposed Amendments to Rule 134 (Differences and Omissions-Cleared Transactions). According to the Exchange, this proposed rule change seeks to create greater efficiency and increase uniformity in the handling of trading errors. This proposed rule change seeks to codify in NYSE Rule 134 the types of currently recognized trading errors. The filing further seeks to expand the currently recognized trading errors to include certain types of trading errors involving not held orders.

The proposed amendment seeks to define a trading error to include

[6] A ''not held'' order is a market or limit order that gives the broker both time and price discretion to attempt to get the best possible execution.

[7] A ''held'' order is a market or limit order that the broker must execute as instructed without discretion as to the time of an execution.

[8] *See* NYSE Rules 134 and 411.

[9] *See* NYSE Regulation, Information Memoranda 01–38, 02–07, 02–19, and 06–34.

[10] *See* NYSE Regulation, Information Memorandum 02–19, issued April 17, 2002, clarifying the application of NYSE Rules 134, 411, and 407A.

[11] A ''difference check'' is a check issued to the customer by the member to cover the monetary difference between the execution price and the price the customer and the member agree was the proper price.

situations when an order is executed outside of a customer's instructions as entered in the electronic order tracking systems[12] of the Exchange. Under the proposed amendment, types of recognized trading errors include, but are not limited to, the execution of a held or not held order: (i) In the incorrect security; (ii) on the wrong side of the market; (iii) at a price outside the price instructions; (iv) for a quantity of shares greater than the amount of shares specified in the order instructions; or (v) the execution of an order in duplicate.[13]

In addition, under the proposed amendment the definition of an error includes when a Floor broker: (i) Neglects to execute a not held order when market conditions permit;[14] (ii) fails to execute a not held order because he or she committed an error as to symbol, side or price in the execution of said order;[15] or (iii) fails to execute a not held order because the order was lost, misplaced or remains unexecuted as a result of a system malfunction.[16]

Pursuant to the above proposed definition of trading errors, a Floor broker would be allowed to use his or her error account to execute a customer's not held order in alignment with the Consolidated Tape, when the Floor broker incorrectly executed a customer's not held order: (i) In the incorrect security; (ii) on the wrong side of the market; or (iii) at a price outside the price instructions when the prevailing market is adverse to the customer's interest at the time that the error is discovered.[17]

a. *Not Held Orders—Incorrect Security.*[18] For example, in instances where the Floor broker purchases or sells the incorrect security, and the market in the correct security is adverse to the customer's interest when the error is discovered, the proposed rule change would allow the broker to review reports of executions on the Consolidated Tape in the correct security and determine if, from the time the Floor broker executed the order in the incorrect security until the time the error was discovered, the customer's order was executable in the correct security. In the event the customer's order was executable during that period of time, the customer is given an execution in the correct stock at the price the stock traded at the time of the broker's error or during the time the error remained unrecognized. The broker's error account is the contra-side of this trade and is then long or short the number of shares ordered by the customer at the price the stock was trading in the relevant time range. For example:

Order: Buy 10,000 *X*YZ at the market, not held.

Execution: Bought 10,000 *K*YZ at $98.05 at 11:20 a.m.

Error Discovered: 11:45 a.m. prior to rendering a report of execution.

Result: Error account long 10,000 *K*YZ at $98.05.

If between 11:20 a.m. and 11:45 a.m. the customer's order in XYZ was executable in its entirety, then the customer buys 10,000 XYZ in its entirety and error account is short 10,000 XYZ at the 11:20 a.m. price.

b. *Not Held Order—Wrong Side of Market*[19]. In instances where the broker incorrectly executes a customer's order on the wrong side of the market, and the market in the correct security is adverse to the customer's interest when the error is discovered, the proposed rule change seeks to allow the Floor broker to use his or her error account to take over the incorrect position and execute the customer's order on the correct side of the market. For example:

Order: Buy 10,000 XYZ at the market, not held.

Execution: Sold 10,000 XYZ at $45.10.

Result: Floor broker takes over error; and Sells customer 10,000 XYZ at $45.10. The error account is ultimately short 20,000 shares XYZ at $45.10 which is the sum of the mistakenly sold 10,000 shares of XYZ taken over by the error account and 10,000 shares sold to the customer at a price of $45.10 from the error account.

c. Not Held Orders—Outside of Price Instructions[20]

In instances where the Floor broker executes the customer's order at the incorrect price, the proposed rule change seeks to allow the Floor broker to take the position into the Floor broker's error account. The Floor broker would then be allowed to execute the customer's order consistent with the executions, sizes and prices as printed on the Consolidated Tape, if between the time that the Floor broker committed the error and when the error was discovered, the stock traded within the customer's order price. For example:

Order: Buy 10,000 XYZ at $80.*50*, Not Held.

Execution: Bought 10,000 XYZ at $80.*80* at 3:00 p.m.

Error Discovered: After close buy order limited to $80.50 is unexecuted.

Result: Error Account Long 10,000 at $80.*80*.

If XYZ traded within the customer's limit anytime from 3 p.m. to the close, the error account sells 10,000 consistent with the executions, sizes and prices as printed on the Consolidated Tape and customer order is executed.

d. Not Held Orders—Over Buy or Over Sell[21]

In instances where the Floor broker executes a quantity greater than contained in the order instructions, the proposed rule change seeks to allow the Floor broker to take the position into the Floor broker's error account. When executing a held or not held order a Floor broker may incorrectly calculate the quantity of shares remaining to fill the order and execute a quantity of shares greater than the instructed amount. For example:

Order: Buy 50,000 XYZ at $80.50, Not Held.

Execution: Bought 5,000 XYZ at $80.50 at 3 p.m.

Bought 5,000 XYZ at $80.49 at 3:10 p.m.

Bought 15,000 XYZ at $80.48 at 3:30 p.m.

Bought 15,000 XYZ at $80.47 at 3:31 p.m.

Bought 5,000 XYZ at $80.48 at 3:36 p.m.

Bought 5,000 XYZ at $80.48 at 3:37 p.m. (Order filled)

Bought 5,000 XYZ at $80.50 at 3:48 p.m. (Overbuy)

Result: Error Account Long 5,000 at $80.50

The last execution of 5,000 shares of XYZ at $80.50 which exceed the quantity specified by the customer is taken into the Floor broker error account.

e. *Not Held Orders—Duplicate Execution.*[22] In instances where the Floor broker duplicates an execution, the proposed rule change seeks to allow the Floor broker to take the position into the Floor broker's error account. During the execution of an order a Floor broker may inadvertently fail to document the execution of an order or may receive a duplicate transmission of an order and thus execute the order in duplicate. The proposal would allow the Floor broker to take the duplicate execution into the Floor broker's error account. For example:

Order: Buy 10,000 XYZ at $80.50, Not Held.

Execution: Bought 10,000 XYZ at $80.50 at 3 p.m.

Duplicate: Bought 10,000 XYZ at $80.50 at 3:40 p.m.

[12] *See* NYSE Rule 123(e).

[13] *See* proposed NYSE Rule 134(g)(i).

[14] *See* proposed NYSE Rule 134(h)(i).

[15] *See* proposed NYSE Rule 134(g)(ii).

[16] *See* proposed NYSE Rule 134(h)(ii)

[17] *See* NYSE Rule 134(d) and proposed NYSE Rule 134(g).

[18] *See* proposed NYSE Rule 134(g)(i)(a).

[19] *See* proposed NYSE Rule 134(g)(i)(b).

[20] *See* proposed NYSE Rule 134(g)(i)(c).

[21] *See* proposed NYSE Rule 134(g)(i)(d).

[22] *See* proposed NYSE Rule 134(g)(i)(e).

Result: Error Account Long 10,000 at $80.50.

The duplicate purchase is taken into the Floor broker's error account.

f. *Not Held Order—Lost or Misplaced.*[23] Pursuant to the proposed rule change, the Floor broker would be allowed to use his or her error account to report executions in alignment with the New York portion of the Consolidated Tape when the Floor broker fails to execute a not held order because of an administrative error that resulted in the order being lost or misplaced or remaining unexecuted as a result of a system malfunction and the market at the time the error is discovered is adverse to the customer's interest (*i.e.*, trading at a price worse than the customer could have received had the error not occurred). Significantly, this proposed amendment would not allow a Floor broker to issue a report of execution from his or her error account in instances where the customer merely did not like the execution, in order to prevent abuse of the new procedure.

In instances where the Floor broker fails to execute an order as a result of an administrative error, such as the loss or misplacement of an order or a system malfunction and the current market conditions are adverse to the customer's interests, the proposed rule change seeks to allow the Floor broker to use his or her error account as the contra party to the misplaced order in alignment with the New York portion of the Consolidated Tape. The Floor broker would be required to execute the customer's order in alignment with half the volume of every New York portion of the Consolidated Tape print up to the size of the customer order, from the time that the order was entered up to the time that the Floor broker realized that the order was lost, misplaced or not executed because of a system malfunction.[24] In the event that this results in a partial round lot,[25] the customer would be entitled to the nearest full lot, rounded down. Therefore if executed volume on the New York portion of the Consolidated Tape was 300 shares, half that volume would result in 150 shares and the customer would be entitled to a report of 100 shares. This is similar to how percentage orders are executed pursuant to NYSE Rules 13 and 123A.30. For example:

Order: Buy 50,000 XYZ at the market, not held.

Event: Order is lost or misplaced or system malfunction.

Execution: Execution in alignment according to the New York portion of the Consolidated Tape unless a better price is available in the market.

20,000 shares traded a minute after order entry time on the NYSE as reported to the Consolidated Tape. Floor broker sells 10,000 shares to customer at the same price of the 20,000 share execution.

Next transaction in XYZ on the New York portion of the Consolidated Tape was 30,000 shares executed. Floor broker sells 15,000 shares to customer from error account at same price as 30,000 share execution.

Next transaction on New York portion of the Consolidated Tape in XYZ was 50,000 shares traded. Floor broker sells 25,000 shares to customer at the same price as the 50,000 share execution.

Customer order is now complete.

Result: Error account sells to the customer and customer receives appropriate report without having to process adjustments.

In order to prevent abuse of the proposed new rules, the filing also seeks to amend NYSE Rule 134(d)(iii) to require a Floor broker to make and keep contemporaneous and detailed records documenting the circumstances surrounding errors. A Floor broker would be required to make and keep a time stamped record[26] of the error containing supporting information the Exchange shall, from time to time, require.[27] In addition, the Member Firm Regulation Division of NYSE Regulation, Inc. would include a review of these records during the course of its routine member firm examinations.

The burden of proof would be on the Floor broker to substantiate that a legitimate error occurred.[28] In instances where the Floor broker asserts that an error occurred as a result of an administrative error, such as the loss or misplacement of the order, or a system malfunction, the proposed amendment requires that a Floor broker submit the aforementioned time stamped record to the Exchange prior to the opening of the Floor on the next trade date following the error.[29] Absent the required documentation, the Floor broker would be prohibited from using his or her error account to address these situations.[30]

Proposed Amendments to NYSE Rule 411 (Erroneous Reports). The Exchange further proposes to amend NYSE Rule 411 to allow a Floor broker to treat erroneous reports[31] as erroneous trades when the Floor broker committed an error as to security, side, or price in order to alleviate disadvantage to the customer.

When a Floor broker commits an error as to security, side or price, there are instances where the Floor broker issues a report to the customer as a result of the execution. The report is issued to the customer prior to the Floor broker identifying that an error occurred. Currently, pursuant to NYSE Rule 411, in instances where a Floor broker issued a report to a customer based on a transaction that was made outside of the customer's instructions on a not held order as discussed above, the Floor broker would be required to rescind the report leaving the customer's order unexecuted and disadvantaging the customer. The actual execution price and size are binding, and the trade clears and settles in accordance with the terms of the transaction as executed. The member and the customer resolve any monetary issues between themselves.

In instances where a Floor broker executed an order in accordance with its terms but the execution details were reported in error, members and member organizations must always accept a corrected report. In the event the erroneous report was made to a non-member, then the non-member may choose to refuse acceptance of a corrected report. In those instances, the Floor broker is allowed to treat the erroneous report to a non-member as though it were an erroneous trade.

Pursuant to the proposed rule change, a Floor broker would treat ''erroneous reports'' as erroneous trades when the price and size of the order would have been executable in the market at or near the time of the erroneous transaction. NYSE Rule 411 (Erroneous Reports), in part, addresses these situations and establishes procedures for members and member organizations to follow in handling erroneous report situations; however erroneous reports issued to

[23] *See* proposed NYSE Rule 134(h)(ii).

[24] *See* proposed NYSE Rule 134(j)(ii).

[25] Securities are generally traded in units of 100 shares referred to as lots. A full round lot is 100 shares. If a trade involves securities that are not in 100 share increments then it is referred to as a partial round lot, *e.g.*, 150 shares.

[26] *See* proposed NYSE Rule 134(i).

[27] The record must include the date and time of the error, the date and time the error was discovered, the size of the error, the stock in which the error occurred, the original instructions, the names of all involved parties including the client and any upstairs trader, a detailed narrative of how the error occurred, detail narrative of discussions with relevant parties, the steps taken to correct the error and the ultimate resolution of the error. *See* proposed NYSE Rule 134(j)(iii).

[28] *See* proposed NYSE Rule 134(j)(iii).

[29] *See* proposed NYSE Rule 134(j)(i).

[30] *See* proposed NYSE Rule 134(j)(iii).

[31] An ''erroneous report'' is a report of an execution that is incorrect as to stock, price or whether an execution actually took place.

customers based on a transaction that was made outside of the customer's instructions, as discussed above, must be rescinded, leaving the customer's order unexecuted.

The proposed rule change would allow the erroneous report based on a transaction that was made in error as to security, side or price to stand, provided the price and size of the erroneous report were within the range of prices and sizes in the specified security reported to the NYSE portion of the Consolidated Tape on the day in which the order was executed.[32] The Floor broker would be required to report the error to the customer, including explaining to the customer whether the error was favorable or unfavorable to the customer.[33] The Floor broker would also be required to document on a trade-by-trade basis, the name of the individual authorized to accept the erroneous report for the customer, the amount of the error and whether the error was favorable to the customer.[34] The Floor broker would then treat the erroneous report as though it was an erroneous trade and his or her error account would become the opposite side to the report.[35] In addition, the Floor broker would assume any loss incurred and any profit that resulted would be paid to the New York Stock Exchange Foundation [36] as currently required by NYSE Rule 411(a)(ii)(5). Thus, any disadvantage would be borne by the Floor broker who was responsible for committing the error, not the customer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act [37] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–28 and should be submitted on or before March 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–3795 Filed 3–5–07; 8:45 am]

BILLING CODE 8010–01–P

[32] *See* proposed NYSE Rule 411(a)(iv)(1).

[33] *See* proposed NYSE Rule 411(a)(iv)(2).

[34] *See* proposed NYSE Rule 411(a)(iv)(3).

[35] *See* proposed NYSE Rule 411(a)(iv)(4).

[36] *See* proposed NYSE Rule 411(a)(iv)(5).

[37] 15 U.S.C. 78f(b)(5).

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, National Small Business Development Center Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, or interested others. The conference call will be held on Tuesday, March 20, 2007 at 1 p.m. Eastern Standard Time.

The purpose of the meeting is to discuss the internal Board issues; the March 5th agency meeting with senior program management; the Association of Small Business Development Center (ASBC) Board March meeting; and congressional visits conducted by board members.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–3812 Filed 3–5–07; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 5713]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Faith and Community: A Dialogue

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/NEA–AF–07–20.

Catalog of Federal Domestic Assistance Number: 00.000.

Application Deadline: May 8, 2007.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, U.S. Department of State, announces an open competition for multiple grants to support international exchange projects under the rubric ''Faith and Community: A Dialogue.'' This is a continuation of the Office of Citizen Exchanges' ''Religion and Society: A Dialogue'' initiative, conducted over the past several fiscal years. Public and private non-profit organizations or consortia of such organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop and implement multi-phased exchanges involving the travel of clerics, scholars of religion, educators, and community leaders/activists from countries with significant Muslim populations to the United States and of reciprocal visits by American clerics, scholars of religion, and community leaders/activists. (Note that additional participant categories may be included in projects for Southeast Europe. See below.)

Authority: Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

I. Overview

The Office of Citizen Exchanges consults with and supports American public and private nonprofit organizations in developing and implementing multi-phased, often multi-year, exchanges of professionals, community leaders, scholars and academics, public policy advocates, non-governmental organization activists, and others. These exchanges address issues of crucial importance to the United States and to other countries; they promote focused, substantive, and cooperative interaction among counterparts; and they entail both theoretical and experiential learning for all participants. A primary goal is the development of sustained, international, institutional and individual linkages. In addition to providing a context for professional development and collaborative problem-solving, these projects are intended to introduce foreign participants and their American counterparts to one another's political, social, and economic structures, facilitating improved communication and enhancing mutual understanding. The exchange proposal should include focused interaction with local citizens in all countries and activities to orient participants to one another's society and culture.

The initiative ''Faith and Community: A Dialogue'' will support international exchanges of clerics, scholars of religion, educators, and community leaders/activists—influential and recognized for their ability to communicate, through sermons, in scholarly writing, or through community leadership and educational activities—between the United States and countries with significant Muslim populations. The objectives of the exchange are (1) to enhance the non-American participants' understanding of the place of religion, particularly of Islam, in the life of American communities; (2) to develop a common language for American and non-American participants to examine issues of relevance to their respective societies and to develop effective approaches to dealing with them; (3) to offer an understanding of Islamic practice within a multi-cultural, multi-faith, democratic context; and (4) to broaden the understanding of American scholars, clerics, and laypersons of Islam and of its place in diverse non-American societies.

We solicit projects that focus on a particular theme of relevance to faith and community groups in the proposed participating countries. Possible themes might be civil discourse in a multi-faith context; the role of law in resolving conflicts and preserving freedom of expression within and among minority/faith communities; the role of faith communities in providing community services; educating for respect and co-existence; or the role of law in protecting religious expression in diverse societies. We welcome proposals for projects on other themes of relevance to participating countries for which the proposing institution has, or can mobilize, American participants with intellectual expertise and an interest in international dialogue on the selected theme. Proposals should explicitly identify how the American organization will identify counterpart experts in participating countries and state the specific outcome to be achieved by each phase or component of the proposed project.

The project, to be conducted over a period of 18 to 24 months, will involve several exchange visits. Initially, one or two American scholars/project organizers may travel to designated partner countries to deepen their familiarity with the particular issues faced by counterpart institutions and communities in those countries and to identify individuals who might serve as advisers or be selected as participants in the project and to gain their interest in the exchange. Subsequently, approximately 12 non-American scholars and clerics will travel to the United States for a period of three to four weeks. The non-American participants will visit Islamic centers, consult with American Muslim scholars and clerics, visit and become familiar with libraries and archives of Islamic documents, make presentations and participate in discussions at non-Muslim religious institutions and at secular institutions that represent America's guarantee of human dignity and freedom of worship, engage in inter-religious dialogue, and participate in workshops and seminars, both public and at institutions dedicated to scholarship and research. Finally, a group of American scholars and clerics will travel to the home countries of the non-American participants, meet with counterparts, visit institutions, and, ideally, cooperate with participants in the original U.S. visit in presenting a seminar, a series of workshops, etc., in order to expand the network of individuals directly affected by the exchange. This series of visits would then be repeated in the following year. Participants in the second year of exchanges might be the same if the goal is to deepen the dialogue, or, if the goal is to accomplish broader participation, participants should be selected to reflect that objective. During each phase of the exchange, traveling participants should be encouraged to have in-depth

interaction with local citizens and to participate in appropriate press, media, and other outreach activities.

Geographic Focus

This initiative is worldwide in scope, with primary focus on countries with significant Muslim populations. For the FY07 competition, in order to assure balance with already existing exchange programs under this rubric, we shall be particularly interested in exchanges focused on the following geographic areas: (1) Francophone West Africa (Senegal; Mauritania; Niger; Mali; Guinea; Burkina Faso; Chad), (2) North Africa (Morocco; Algeria; Tunisia), (3) Southeastern Europe (Albania; Bosnia and Herzegovina; Croatia; Macedonia; Montenegro; Serbia), (4) Southeast Asia (Malaysia; the Philippines; Thailand), and (5) The countries of the Arabian Gulf (Saudi Arabia; Kuwait; Qatar; Bahrain; the United Arab Emirates; Oman; Yemen). Exchange proposals that focus on two or more countries in a region or those that focus on single-country exchanges are equally welcome. For projects in Southeast Europe, participants may be educators and others who influence youth, journalists specializing in social/inter-communal issues, as well as clerics, scholars, and community activists/leaders. Projects for this region may also focus more intensely on inter-faith dialogue and include activities encouraging tolerance, respect among communities, and joint-faith community outreach activities.

The Office of Citizen Exchanges encourages applicants to be creative in planning project implementation. Activities for all regions may include both theoretical orientation/philosophical background sessions and experiential, community-based initiatives designed to achieve objectives or produce a specific product (magazine, study guide, educational outreach material, etc.) to be used in local communities. Applicants should, in their proposals, identify any partner organizations and/or individuals overseas or in the U.S. with which/whom they are proposing to collaborate and justify the collaboration on the basis of the proposed partner's experience, accomplishments, etc.

Selection of Participants

Applications should include a description of a merit-based, focused participant selection process. Applicants should anticipate consulting with the Public Affairs Sections of U.S. Embassies in selecting participants, with the Embassy retaining the right to nominate participants, to advise the grantee regarding participants recommended by other entities, and to determine the appropriateness of granting visas.

Public Affairs Section Involvement

The Public Affairs Sections (PAS) of the U.S. Embassies often play an important role in project implementation. The PAS will initially evaluate project proposals, and, once a grant is awarded, the PAS may, in consultation with the grantee organization, coordinate planning with the grantee organization and in-country partners, facilitate in-country activities, nominate participants and vet grantee nominations, observe in-country activities, and debrief participants. The PAS will also evaluate project impact. The Bureau of Educational and Cultural Affairs is responsible for producing and signing DS–2019 Forms. These forms will be provided the foreign participants by the U.S. Mission as part of the process of obtaining the necessary J–1 visas for entry to the United States on a government-funded project. Grantee organizations must submit data on proposed participants electronically.

Though project administration and implementation are the responsibility of the grantee institution, the grantee is expected to inform the PAS in participating countries of its operations and procedures and to coordinate with PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, political and cultural sensitivities, security issues, and logistic and programmatic issues.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2007.

Approximate Total Funding: $1,500,000.

Approximate Number of Awards: three or more, with awards ranging from $250,000 to $500,000.

Anticipated Award Date: Pending availability of funds, August 2007.

Anticipated Project Completion Date: September 1, 2009.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide the highest possible level of in-cash or in-kind cost sharing and funding in support of its programs, and those that provide cost sharing that represents 20% or more of the total cost of the exchange will receive priority consideration. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:*

a. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding, in the course of this competition, grants ranging from $350,000 to $500,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to receive an award under this competition.

b. Technical Eligibility: Proposals must comply with the requirements included in this Request for Grant Proposals in order to be considered technically eligible for consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete announcement, either at *http://www.exchanges.state.gov/education/rfgps* or in the **Federal Register** before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Obtaining an Application Package:* The Application Package comprises this Request for Grant Proposals and a Proposal Submission Instruction (PSI) document, consisting of required application forms and standard guidelines for proposal preparation.

The Solicitation Package may be downloaded from: *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

IV.2. To receive a hard copy of the Application Package via U.S. Postal Service, contact Thomas Johnston, Office of Citizen Exchanges, ECA/PE/C/NEA–AF, Room 216, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 453–8162; Fax (202) 453–8168; e-mail *JohnstonTJ@state.gov.* Please refer to Funding Opportunity Number ECA/PE/C/NEA–AF–07–20 on all inquiries and correspondence.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, a proposal narrative, and a budget. Please refer to the Application Package, containing the mandatory Proposal Submission Instructions (PSI) document, for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. *Adherence To All Regulations Governing The J Visa.* The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 et seq.

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 et. seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

IV.3d.2. *Diversity, Freedom and Democracy Guidelines.* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable,

attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes* represent specific results a project is intended to achieve and are usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Budgets that limit administrative costs to approximately 25% of the funding sought from ECA will be given priority consideration.

IV.3e.2. Allowable costs for the program include the following:

(1) Direct program expenses
(2) Administrative costs
(3) Allowable indirect costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Application Deadline and Methods of Submission:*

Application Deadline Date: May 8, 2007.

Reference Number: ECA/PE/C/NEA–AF–07–20.

Methods of Submission: Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or
2. Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. *Submitting Printed Applications.* Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and ten (10) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/NEA–AF–07–20, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2. *Submitting Electronic Applications.* Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin

the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. e-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grant awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

Quality of the program idea: Proposals should be substantive, well thought out, focused on issues of demonstrable relevance to all proposed participants, and responsive to the exchange suggestions and guidelines provided above.

Implementation Plan and Ability To Achieve Objectives: A detailed project implementation plan should establish a clear and logical connection between the interest, the expertise, and the logistic capacity of the applicant and the objectives to be achieved. The plan should discuss in concrete terms how the institution proposes to achieve the objectives. Institutional resources—including personnel—assigned to the project should be adequate and appropriate to achieve project objectives. The substance of workshops and site visits should be included as an attachment, and the responsibilities of U.S. participants and in-country partners should be clearly delineated.

Institutional Capacity: Proposals should include an institutional record of successful exchange programs, with reference to responsible fiscal management and full compliance with reporting requirements. The Bureau will consider the demonstrated potential of new applicants and will evaluate the performance record of prior recipients of Bureau grants as reported by the Bureau grant staff.

Post-Grant Activities: Applicants should provide a plan for sustained follow-on activity (building on the linkages developed under the grant and the activities initially funded by the grant) after grant funds have been expended. This will ensure that Bureau-supported projects are sustainable and are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside the Bureau. Costs for these activities should not appear in the proposal budget but should be outlined in the narrative.

Project Evaluation/Monitoring: Proposals should include a detailed plan to monitor and evaluate the project. Competitive evaluation plans will describe how the applicant organization will measure results, defined in both qualitative and quantitative terms and will include draft data collection instruments (surveys, questionnaires, etc.) in Tab E. Successful applicants will be expected to submit a report after each project component is concluded or semi-annually, whichever is less frequent.

Cost Effectiveness and Cost Sharing: Administrative costs should be kept low. Proposal budgets should provide evidence of any cost sharing offered, comprised of cash or in-kind contributions. Cost sharing may be derived from diverse sources, including private sector contributions and/or direct institutional support.

Support of Diversity: Proposals should demonstrate support for the Bureau's policy on diversity. Features relevant to this policy should be cited in program implementation (selection of participants, program venue, and program evaluation), program content, and program administration.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer and mailed to the recipient's responsible officer, identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. *Administrative and National Policy Requirements:*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus one copy of the following reports:

1. Semi-annual program and financial reports, which include a description of program activities implemented in the course of the six-month period and an accounting of expenditures.

2. A final program and financial report no more than 90 days after the expiration date of the award.

3. Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Thomas Johnston, Office of Citizen Exchanges, ECA/PE/C/NEA–AF, Room 216, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 453–8162; Fax: (202) 453–8168; e-mail: *JohnstonTJ@state.gov.* Correspondence with the Bureau concerning this RFGP should reference the title and number ECA/PE/C/NEA–AF–07–20.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 27, 2007.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–3869 Filed 3–5–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be on April 11, 2007, at 10 a.m.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 10th floor, MacCracken Room.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on April 11, 2007, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda includes:

- ISO Feedback
- Future taskings of ARAC
- Issue Area Status Reports from Assistant Chairs
- Remarks from other EXCOM members

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by April 4. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by April 4 to present oral statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, February 26, 2007.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. E7–3801 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–26971]

Notice of Request for Comments on Renewal of a Currently Approved Information Collection: Medical Qualification Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This information collection pertains to the requirements set forth in 49 CFR parts 391 and 398 for the following activities: (1) A medical examination form and certificate to be completed by a licensed medical examiner; (2) The submission of an application to FMCSA for the Agency to resolve conflicts of medical evaluations between medical examiners; (3) A driver qualification (DQ) file for: (a) Motor carriers to include the medical certificate; (b) motor carriers of migrant workers to include a doctor's certificate

for every driver employed or used by them; and (c) motor carriers to include a Skill Performance Evaluation (SPE) certificate issued to a driver with a limb disability; and (4) Information collected from carriers, drivers and interested parties used in Agency determinations for granting exemptions from the vision and diabetes requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency published a **Federal Register** notice allowing for a 60-day comment period on the ICR in October 2006 (71 FR 61822, Oct. 19, 2006). The Agency did not receive any comments in response to this notice.

DATES: Please send your comments by April 5, 2007. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: DOT/FMCSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Medical Qualification Requirements.

OMB Control Number: 2126–0006.

Type of Request: Revision of a currently-approved information collection.

Respondents: Medical Examiners, Medical Specialists, Physicians, Licensed Doctors of Medicine, Doctors of Osteopathy, Physician Assistants, Advanced Practice Nurses, Doctors of Chiropractic, motor carriers, and CMV drivers.

Estimated Number of Respondents: 7,000,000.

Estimated Time per Response: The following records are included in the IC pertaining to the Medical Qualifications Requirements: (1) *The Medical Examination Form and Certificate*—Twenty minutes for a medical examiner to complete, document, and file the medical examination report; One minute for the medical examiner to complete the medical examiner's certificate and furnish one copy to the person who was examined and one copy to the motor carrier who employs him or her; One minute for carriers to file the medical examiner's certificate in the DQ file; (2) *Data Resolving Medical Conflicts*—One hour for the Safety Director of a motor carrier company to prepare paperwork for each case and an additional 8 hours to attend any hearings for resolution of medical conflict; (3) *The SPE Certificate*—Fifteen minutes for a driver to complete an application for an initial SPE certificate; Two minutes to complete an application for a renewal of a SPE certificate; One minute for carriers to copy and file the SPE certificate application in the DQ file; (4) *Vision Exemptions*—Sixty minutes for a driver to complete an application for a vision exemption with required supporting documents from carriers and interested parties; (5) *Diabetes Exemptions*—Sixty minutes for a driver to complete a diabetes exemption with required documentation; and (6) *The Doctor's Certificate for Motor Carriers of Migrant Workers*—One minute for a doctor of medicine or osteopathy to complete a doctor's certificate for drivers of motor carriers of migrant workers; and for carriers to place the certificate in the DQ file for every driver employed or used by them.

Expiration Date: March 31, 2007.

Frequency of Response: Biennially, and on occasion, more frequently for drivers who are not eligible to receive a 2-year certificate. There are 7,000,000 drivers subject to the FMCSA medical standards. A medical certificate usually is valid for 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every two years, so halving the number of drivers underestimates the total number of certifications that are conducted annually. In addition, some employers require newly hired drivers to obtain a new medical certification even if the driver's current certificate is still valid. As a result of these exceptions to the biennial medical certification schedule, the Agency estimates that the actual number of medical certifications conducted annually is 20 percent greater than would be the case if all drivers were examined biennially. Biennial examinations would result in approximately 3,500,000 medical examinations per year, but the Agency estimates that approximately 4,200,000 examinations are conducted annually.

Estimated Total Annual Burden: 1,541,534 hours [1,540,000 hours for medical examination form and certificate (4,200,000 certificates × 22 minutes/60 minutes per hour + 11 hours for resolution of medical conflicts (3 cases × 1 hour each to prepare, plus 8 hours for one hearing) + 192 hours for SPE certificates (2,100 certificates × 1 minute/60 minutes for motor carriers + 1,700 renewals × 2 minutes/60 minutes + 400 new × 15 minutes/60 minutes) + 727 hours for vision exemptions (1572 total applicants × .27 or 27 % + 268 new vision exemptions + 35 hours for motor carriers motor carriers to retain a copy in the driver's DQ file) + 600 hours for diabetes exemptions (600 applications × 1 hour) + 3.5 rounded to 4 hours for doctors certificate for drivers of migrant workers (100 certificates × 2 minutes/60 minutes) = 1,541,534 hours].

Background

Title 49 U.S.C. 31136 requires the Secretary of Transportation (Secretary) to prescribe regulations to ensure that the physical qualifications of commercial motor vehicle (CMV) operators are adequate to enable them to operate CMVs safely. In addition, 49 U.S.C. 31502 authorizes the Secretary to prescribe requirements for qualifications of employees of a motor carrier when needed to promote safety of operation. Information about an individual's physical condition must be collected in order for the FMCSA, States and motor carriers to verify that the individual meets the physical qualification standards for CMV drivers set forth in 49 CFR 391.41; and for the FMCSA to determine whether the individual is physically able to operate a CMV safely. This information collection is comprised of the components listed in the summary above.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: February 26, 2007.

Rose A. McMurray,

Assistant Administrator, Chief Safety Officer.

[FR Doc. E7–3803 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25004]

Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; Denial of petition for determination.

SUMMARY: FMCSA denies a petition from the Oregon Department of Transportation (ODOT) for a determination that the State may continue to require interstate motor carriers to display weight-mile tax credentials (WMTCs) in commercial motor vehicles (CMVs) in Oregon. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) prohibits States from requiring motor carriers to display in, or on, CMVs any form of identification other than forms required by the Secretary of Transportation. However, SAFETEA–LU also provides that a State may continue to require display of credentials that the Secretary determines are appropriate. ODOT requested that FMCSA determine that its WMTCs are appropriate under SAFETEA–LU. FMCSA denies ODOT's request because it could find no evidence to support a determination that the display of the WMTCs is appropriate. Therefore, the State of Oregon may no longer require interstate motor carriers to display WMTCs.

DATES: This decision is effective March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–4009. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4306 of SAFETEA–LU prohibits States from requiring motor carriers to display in or on commercial motor vehicles any form of identification other than forms required by the Secretary of Transportation [49 U.S.C. 14506(a)]. However, § 14506(b)(3) provides, in part, that ''a State may continue to require display of credentials that are required * * * under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate.''

ODOT requested that FMCSA determine that the State's WMTCs are appropriate in the context of 49 U.S.C. 14506(a). Oregon has been requiring motor carriers to obtain weight-mile tax credentials since 1947.

Oregon Revised Statutes (ORS) 825.454 authorizes ODOT to require the use of identification devices, such as cab cards, stamps or carrier identification numbers, to identify, and be carried in or placed upon, each motor vehicle authorized to be operated in Oregon. ODOT may require annual application for identification devices and it may charge a fee not to exceed $8 for each device issued on an annual basis. ORS 825.450 requires ODOT to issue a permanent credential and ORS 825.470 authorizes issuance of temporary credentials. Until 2001, ODOT required out-of-state carriers to display a special Oregon license plate on each truck registered to operate in the State. State legislation passed in 2001 eliminated the need for out-of-state based vehicles to display the Oregon license plate and substituted the simpler requirement to carry a permanent or temporary paper credential.

ODOT states the current WMTCs identify a motor carrier's Oregon account, facilitate reporting and payment of the tax, and assist in tracking vehicle-miles traveled over Oregon highways. ODOT also believes truck drivers want to have the credential at hand when fueling in Oregon, because fuel providers use it to verify that a vehicle is exempt from Oregon fuel tax. ODOT advises that approximately 15,000 out-of-state based carriers operate 283,000 trucks that carry a permanent Oregon tax credential. It also advises that approximately 10,000 trucks with a 10-day temporary credential operate within the State at any given time. A copy of ODOT's petition for determination is available for review in the docket for this notice.

Public Comments

On June 13, 2006, FMCSA published a notice in the **Federal Register** requesting public comment on the ODOT request to be allowed to continue requiring motor carriers to display weight-mile tax credentials. [''Identification of Vehicles: Oregon Department of Transportation Tax Credentials; Petition for Determination;'' Docket No. FMCSA–2006–25004, June 13, 2006, 71 FR 34188]. In formulating its position, FMCSA considered all of the comments received in response to the Agency's **Federal Register** notice.

Eleven comments were submitted to the docket. The comments were almost evenly divided between supporters and opponents of Oregon's request for exception. Six commenters supported ODOT's request; this includes a comment filed by ODOT. Five commenters opposed the request and urged FMCSA to deny it.

The commenters' discussions, both for and against granting the exemption request, centered on the following issues:

- Intended versus unintended consequences of denying ODOT's request;
- Denying ODOT's request could result in complications for motor carriers;
- Denying ODOT's request could result in complications for Oregon;
- Benefits associated with the weight-mile tax credential;
- Ease of obtaining the credential; and
- Consideration of grandfather privileges.

Intended Versus Unintended Consequences of Denying ODOT's Request

The ODOT suggests, in its July 6, 2006, filing to the docket, that Congress may have unintentionally included Oregon's weight-tax credential when enacting the provisions of 49 U.S.C. 14506. However, ODOT admits there is no specific discussion of its weight-tax credential in the Congressional record. ODOT suggests that the only evidence of legislative intent may be found in a March 8, 2006, bipartisan letter, filed in the docket on June 13, 2006, from Oregon's Congressional delegation to the Secretary of Transportation expressing concern about the preemption and support for the State's request. ODOT goes on to suggest that its weight-tax credentialing program may have been confused with the International Fuel Tax Agreement and International Registration Plan. This argument is supported by the Oregon Concrete & Aggregate Producers Association, Inc., the American Automobile Association (AAA) of Oregon/Idaho, and AAA of Washington, DC.

The Owner-Operator Independent Drivers Association, Inc. (OOIDA) states that ODOT provides no compelling information in its argument which would suggest Congressional intent. The OOIDA suggests that ODOT's weight-mile tax credential is precisely the type of document Congress had in mind when it was considering section 4306. The OOIDA states, ''There is nothing in SAFETEA–LU that singles out Oregon for either attention or a special exemption.''

In comments to the docket, the American Trucking Associations cite legislation that it suggests shows Congress's intent to lessen the paperwork requirements on interstate motor carriers by individual States.

FMCSA Response: No information was presented to support ODOT's assertion that Congress

''unintentionally'' included Oregon's weight-tax credential when it adopted the provisions of 49 U.S.C. 14506(b). To the contrary, ODOT's weight-mile tax credential is likely the type of paper credential intended to be prohibited. Absent clear evidence of Congressional intent, the Agency must follow the plain language of the statute.

Denying ODOT's Request Could Result in Complications for Motor Carriers

The ODOT suggests in its comments that many interstate motor carriers use the credential to obtain the benefit of not having to pay a fuel-tax when purchasing diesel fuel in the State. The ODOT suggests that not having the credential to present to suppliers at the time of purchase will result in an unnecessary administrative burden when reclaiming the fuel tax. Other commenters did not address this issue.

The OOIDA states in its comments that over the past two decades, Congress and the Department of Transportation have simplified multiple-licensing, registration, and reporting requirements that States imposed on interstate commerce. Also, OOIDA states that it and other industry associations have concluded that there is no net benefit to requiring display of the ODOT weight-mile tax credential.

The United Parcel Service (UPS) states that Federal and State regulatory agencies, in conjunction with the motor carrier industry, have worked to reduce vehicle paperwork requirements to only those which are truly safety-related (hazardous materials, emergency, vehicle inspection, etc.). Furthermore, UPS argues that Oregon already verifies electronically the compliance of motor carriers with its financial responsibility requirements and is well positioned to expand that system to weight-distance tax compliance.

The Oregon Concrete & Aggregate Producers Association, Inc. advises that it and its members do not find that being required to maintain the weight-mile tax credential is burdensome. The AAA organizations also suggest the weight-mile tax credential requirement is not burdensome, primarily because of the ease of obtaining the credential electronically.

FMCSA Response: No motor carriers commented directly upon ODOT's claim that display of the weight-mile tax credential has benefits for carriers, such as providing them documentation for fuel-tax relief. FMCSA recognizes that the elimination of paperwork is a goal included in most Federal programs, and believes that such paper-based credentials should be authorized only when absolutely necessary.

Denying ODOT's Request Could Result in Complications for Oregon

The ODOT states that if not granted the exception, enforcing the weight-mile tax will be more challenging and opportunities for tax evasion will increase. It suggests that evasion by motor carriers in purchasing the weight-mile tax credential will result in a loss of funding for the State.

Opponents of the exception all suggest that ODOT can develop technological means that would allow for immediate verification by enforcement officials as to whether or not a motor carrier has complied with Oregon's weight-mile tax laws.

FMCSA Response: ODOT acknowledged that by accessing State data systems, police officers may be able to verify payment of the weight-mile tax without having the paper credential on the vehicle. The fact that enforcement could be ''more challenging'' does not outweigh the burden that the additional paperwork places on carriers engaged in interstate commerce.

Benefits Associated With the Weight-Mile Tax Credential

The ODOT and all of the commenters that support the weight-mile tax credential suggest that one of its benefits is to ensure that motor carriers meet their cost responsibility for road use in Oregon.

The ODOT also contends that the weight-mile tax credential has a safety-related benefit, resulting in Oregon's Motor Carrier Management Information System non-match rate [1] being one of the lowest in the country.

The OOIDA and UPS both contend that ODOT could and should rely solely on the U.S. DOT number, as required by 49 CFR 390.21, to accurately identify motor carriers operating in its State, and that the weight-mile tax credential does not significantly add any value to this process. The OOIDA argues that Oregon wants to maintain the ''easy revenue'' derived from fining drivers who misplace the paper credentials.

FMCSA Response: The value of the Oregon weight-mile tax credential as an enforcement tool was previously addressed. Although the existence of a weight-mile tax credential on the vehicle might assist an officer in determining the correct identification of the motor carrier, there are many other factors having a greater value, such as vehicle markings, shipping documents, and lease agreements. Considering the use of owner-operators and leased vehicles, the weight-mile tax credential would not necessarily be a determinative factor in identifying the responsible motor carrier.

Ease of Obtaining the Credential

The ODOT and the commenters who support the weight-mile tax credential advise that it can be obtained electronically without elaborate administrative processes. However, ODOT states that only those motor carriers registered to use its Trucking Online Internet-based service can obtain the weight-mile tax credential online.

No commenter that opposes the credential contradicted the assertion of the ease of electronic filing. Several, however, including OOIDA, ATA, and UPS, contend that the overall process of applying for and obtaining the paper credential is an administrative burden and serves no purpose other than to generate revenue for the State. Each contends that motor carriers that fail to produce the weight-mile tax credential at time of inspection are issued citations even though the carrier may be registered with the State.

FMCSA Response: Although it may be relatively easy for a motor carrier to obtain the Oregon weight-mile tax credentials, ensuring that the paper documents are distributed to and carried on each vehicle, and that the driver has ready access to the document, could add considerably to the paperwork burden of the carrier and driver, especially if similar documents were to be required by other States.

Consideration of Grandfather Privileges

ODOT contends that it should be granted grandfather privileges for requiring the weight-mile tax credential because it has been requiring the road user taxes since 1947. However, it offers no evidence that Congress intended to grant such privileges regarding section 4306, as pointed out by OOIDA in its comments.

FMCSA Response: Section 4306 does not provide any authority for, or indication of Congressional intent supporting, the grandfathering of existing credentials that would otherwise be prohibited.

FMCSA Decision

The FMCSA has decided to deny ODOT's request that the Agency determine that the State's WMTCs are appropriate in the context of 49 U.S.C. 14506(a). The Agency considered all comments submitted to the docket, including the ODOT's assertion that

[1] ''Non-match rate'' refers to the matching of driver-vehicle inspections conducted by State officials with the appropriate motor carrier record in the FMCSA Motor Carrier Management Information System. A valid ''match'' enables use of the State data in determining safety status of an interstate motor carrier.

preemption of the WMTCs is an ''unintended consequence'' of Section 4306. The Agency found no evidence to support that position. In fact, one could just as easily conclude that the WMTCs are exactly the type of display Section 4306 was enacted to prohibit. Furthermore, there is no indication in the legislative history of SAFETEA–LU that Congress intended to ''grandfather'' existing display requirements, other than those specifically listed in 49 U.S.C. 14506(b). In consideration of the above, the State of Oregon may no longer require interstate motor carriers to display weight-mile tax credentials on CMVs.

Issued on: February 26, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–3806 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–21323]

Withdrawal of Regulatory Guidance Concerning the Use of Surge Brakes on Commercial Motor Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; withdrawal of regulatory guidance.

SUMMARY: FMCSA withdraws all prior regulatory guidance, previously in the **Federal Register**, as well as memoranda and letters issued by the Agency, indicating that surge brakes do not meet certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs). Elsewhere in today's issue of the **Federal Register**, FMCSA amends the FMCSRs to allow the use of automatic hydraulic inertia brake systems (surge brakes) on trailers when the ratios of gross vehicle weight ratings for the towing-vehicle and trailer are within certain limits.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Federal Motor Carrier Safety Administration, Office of Policy and Program Development, Vehicle and Roadside Operations Division, Washington, DC 20590, phone (202) 366–0676, fax (202) 366–8842, e-mail *luke.loy@dot.gov*.

SUPPLEMENTARY INFORMATION: On November 17, 1993, the Federal Highway Administration (FHWA) [1] published ''Regulatory Guidance for the Federal Motor Carrier Safety Regulations,'' at 58 FR 60734. The publication included interpretations of 49 CFR 393.48, a rule that requires brakes to be operable at all times, and 49 CFR 393.49, the requirement that the braking system on CMVs be designed such that one brake application valve controls all the brakes on the vehicle. The Agency interpreted the regulations to prohibit the use of surge brakes on Commercial Motor Vehicles (CMVs) operated in interstate commerce. The regulatory guidance was republished on April 4, 1997, at 62 FR 16370.

The FMCSA subsequently issued an Enforcement Policy memorandum on September 14, 2004, directing Federal enforcement staff, and requesting State and local enforcement officials, temporarily to allow surge brakes on CMVs operated in interstate commerce, under certain conditions, pending completion of a notice-and-comment rulemaking proceeding through which a determination would be made whether surge brakes should be allowed on a permanent basis. A copy of that Enforcement Policy memorandum is in the docket cited at the beginning of this notice.

A final rule issued by FMCSA, published elsewhere in today's issue of the **Federal Register**, amends the FMCSRs to allow the use of surge brakes. The final rule defines the term ''surge brake'', identifies the requirements for a surge brake system, and allows the use of automatic hydraulic inertia brake systems (surge brakes) on trailers when the ratios of gross vehicle weight ratings for the towing-vehicle and trailer are within certain limits. Therefore, in consideration of the final rule on surge brakes, the Agency withdraws all prior interpretations and regulatory guidance, issued previously in the **Federal Register**, as well as FMCSA memoranda and letters, stating that surge brakes do not meet the requirements of 49 CFR 393.48 and 393.49.

Issued on: February 26, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–3813 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–EX–P

[1] The Motor Carrier Safety Improvement Act of 1999 [Public Law 106–159, 113 Stat. 1748 (December 9, 1999)] established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule delegating to the FMCSA Administrator the motor carrier safety functions required by MCSIA, which included certain motor carrier safety functions previously delegated to the FHWA (65 FR 200).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–26555]

The New Car Assessment Program; Suggested Approaches for Enhancements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correction of Public Hearing Time.

Correction

In notice document Volume 72 Number 16 beginning on page 3473 on the issue date of January 25, 2007, make the following correction to the meeting time posted:

1. On page 3473, under Public Hearing, the beginning time is corrected to read as 8:30 a.m.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: February 27, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–3814 Filed 3–5–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–27376]

Notice of Receipt of Petition for Decision That Nonconforming 2004 Volkswagen Passat Sedan and Wagon Model Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2004 Volkswagen Passat sedan and wagon model passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 Volkswagen Passat sedan and wagon model passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and

sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is April 5, 2007.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2004 Volkswagen Passat sedan and wagon model passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2004 Volkswagen Passat sedan and wagon model passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2004 Volkswagen Passat sedan and wagon model passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2004 Volkswagen Passat sedan and wagon model passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2004 Volkswagen Passat sedan and wagon model passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages, 212 Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of a U.S.-model instrument cluster.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate front side-mounted marker lamps; and (b) installation of U.S.-model taillamp assemblies which incorporate rear side-mounted marker lamps.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of U.S.-version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Installation of U.S.-version software to meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection:* (a) Inspection of all vehicles and replacement of any non U.S.-model seat belts, air bag control units, air bags, and sensors with U.S.-model components on vehicles that are not already so equipped; and (b) installation of U.S.-version software to ensure that the seat belt warning system meets the requirements of this standard.

The petitioner states that the crash protection system used in these vehicles consists of dual front airbags and knee bolsters, and combination lap and shoulder belts at the front and rear outboard seating positions. These manual systems are automatic, self-tensioning, and are released by means of a single red push-button.

Standard No. 225 *Child Restraint Anchorage Systems:* Inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and replacement of non-U.S.-model fuel system components with U.S.-model components on vehicles not already so equipped.

Standard No. 401 *Interior Trunk Release:* Inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 27, 2007.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–3817 Filed 3–5–07; 8:45 am]

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Reader Aids

Federal Register

Vol. 72, No. 43

Tuesday, March 6, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
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FEDERAL REGISTER PAGES AND DATE, MARCH

9233–9432 1
9433–9650 2
9651–9840 5
9841–10032 6

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR
376 9233
3369 9235

3 CFR
Proclamations:
6641 (See Proclamation 8111) 10025
8031 (Amended by Proclamation 8112) 10031
8107 9431
8108 9641
8109 9643
8110 9649
8111 10025
8112 10031
Executive Orders:
11651 (See Proclamation 8111) 10025
13288 (See Notice of February 28, 2007) 9645
13391 (See Notice of February 28, 2007) 9645
Administrative Orders:
Notices:
Notice of February 28, 2007 9645

7 CFR
984 9841
Proposed Rules:
205 9872

9 CFR
317 9651
381 9651

10 CFR
Proposed Rules:
50 9708

14 CFR
39 ..... 9237, 9652, 9655, 9657, 9658, 9660, 9662, 9666, 9843
71 ..... 9238, 9239
91 9845
97 9846
Proposed Rules:
25 9273
39 ..... 9276, 9475, 9877, 9880

15 CFR
740 9847
742 9847
744 9433
774 9847

16 CFR
0 9434

17 CFR
Proposed Rules:
240 9412
249 9412

18 CFR
Proposed Rules:
Ch. I 9281

19 CFR
12 10004
163 10004
361 10004

20 CFR
404 9239
416 9239
Proposed Rules:
404 9709
416 9709

21 CFR
14 9674
310 9849
358 9849
520 9242
522 ..... 9242, 9243
558 ..... 9244, 9245

22 CFR
99 9852

25 CFR
61 9836

26 CFR
1 ..... 9245, 9262
Proposed Rules:
1 9284
301 9712

29 CFR
Proposed Rules:
1910 9716

30 CFR
942 9616
Proposed Rules:
250 9884

33 CFR
117 ..... 9435, 9854, 9855
165 9436
Proposed Rules:
100 9477
165 9901

40 CFR
52 ..... 9263, 9441

180 9834
Proposed Rules:
60 9903
63 9718
81 9285

42 CFR

Proposed Rules:
405 9479
424 9479
498 9479

44 CFR

67 9675

45 CFR

74 9233
76 9233
1169 9235
Proposed Rules:
98 9491

47 CFR

Proposed Rules:
76 9289

48 CFR

Ch. 44 9445

49 CFR

393 9855
Proposed Rules:
229 9904

50 CFR

229 ....9446, 9448
679 ....9272, 9450, 9451, 9676
Proposed Rules:
17 9913
223 9297
622 9499
648 9719
665 9500

REMINDERS

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.

RULES GOING INTO EFFECT MARCH 6, 2007

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Crime control items; license exception availability, license requirements, and licensing policy; revisions and clarifications; published 3-6-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Grand Canyon National Park, AZ; special flight rules in vicinity—

Special flight rules area informational map; obsolete reference removed; published 3-6-07

Airworthiness directives:

Airbus; published 1-30-07

Bombardier; published 1-30-07

Dassault; published 1-30-07

Standard instrument approach procedures; published 3-6-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; minimal-risk regions; importation of live bovines and products derived from bovines; comments due by 3-12-07; published 1-9-07 [FR 07-00017]

Cattle export; pre-export tuberculosis and brucellosis testing requirement; elimination; comments due by 3-12-07; published 1-10-07 [FR E7-00111]

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

License exceptions; destinations of diversion concern; Country Group C designation; comments due by 3-12-07; published 2-26-07 [FR E7-03252]

CONSUMER PRODUCT SAFETY COMMISSION

Federal Hazardous Substances Act:

Children's jewelry containing lead; injury risk; comment request; comments due by 3-12-07; published 1-9-07 [FR E7-00109]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

Commercial and industrial equipment, energy efficiency program-

Distribution transformers; comments due by 3-12-07; published 2-9-07 [FR E7-02168]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural Gas Policy Act:

Interstate natural gas pipelines; capacity release policies; comment request; comments due by 3-12-07; published 1-10-07 [FR E7-00128]

Standards of conduct:

Natural gas pipeline transmission providers; comments due by 3-15-07; published 1-29-07 [FR E7-01118]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Electric utility steam generating units and industrial-commercial-institutional steam generating units; comments due by 3-12-07; published 2-9-07 [FR E7-01881]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Florida; comments due by 3-12-07; published 2-8-07 [FR E7-02117]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

California; comments due by 3-16-07; published 2-14-07 [FR E7-02538]

Air quality implementation plans; approval and promulgation; various States:

West Virginia; comments due by 3-12-07; published 2-8-07 [FR E7-02126]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Beauveria Bassiana HF23; comments due by 3-12-07; published 1-10-07 [FR E7-00170]

Toxic substances:

Significant new uses—

2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione; comments due by 3-16-07; published 1-30-07 [FR E7-01413]

FEDERAL DEPOSIT INSURANCE CORPORATION

Deposit insurance coverage; large-bank deposit insurance determination modernization proposal; comments due by 3-13-07; published 12-13-06 [FR E6-21143]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human and animal drugs:

Cattle material; prohibited use in medical products for humans and drugs intended for use in ruminants; comments due by 3-13-07; published 1-12-07 [FR E6-22329]

Human drugs:

Investigational drugs; sale; comments due by 3-14-07; published 12-14-06 [FR 06-09685]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Pollution:

Mandatory ballast water management reporting and recordkeeping requirements; comments due by 3-16-07; published 11-8-06 [FR E6-18903]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Sacramento River, CA; comments due by 3-14-07; published 3-6-07 [FR E7-03804]

Savannah River, Savannah GA; comments due by 3-12-07; published 1-9-07 [FR 07-00038]

INTERIOR DEPARTMENT

Indian Affairs Bureau

Indian trust management reform; comments due by 3-12-07; published 1-25-07 [FR 07-00325]

INTERIOR DEPARTMENT

Indian trust management reform; comments due by 3-12-07; published 1-25-07 [FR 07-00325]

PERSONNEL MANAGEMENT OFFICE

Civil service regulations:

Student loans repayment; comments due by 3-12-07; published 1-9-07 [FR E7-00101]

SECURITIES AND EXCHANGE COMMISSION

Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):

Interactive data voluntary reporting program; mutual fund risk/return summary information data tagging; comments due by 3-14-07; published 2-12-07 [FR E7-02254]

Securities:

Credit Rating Agency Reform Act of 2006; implementation—

Nationally recognized statistical rating organizations; comments due by 3-12-07; published 2-9-07 [FR 07-00548]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 3-12-07; published 2-8-07 [FR E7-01883]

Boeing; comments due by 3-13-07; published 1-12-07 [FR E7-00220]

British Aerospace Regional Aircraft; comments due by 3-14-07; published 2-12-07 [FR E7-02312]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-12-07; published 1-10-07 [FR E7-00147]

Latinoamericana de Aviacion S.A.; comments due by 3-16-07; published 2-14-07 [FR E7-02508]

Robinson Helicopter Co.; comments due by 3-12-07; published 1-9-07 [FR 07-00026]

Airworthiness standards:

Special conditions—
Aviation Technology Group Javelin Model 100 airplane; comments due by 3-12-07; published 2-8-07 [FR E7-02097]
Quest Aircraft Co. Kodiak Model 100 airplane; comments due by 3-12-07; published 2-8-07 [FR E7-02098]
Class D airspace; comments due by 3-15-07; published 1-9-07 [FR 07-00008]
Class E airspace; comments due by 3-15-07; published 2-26-07 [FR 07-00804]

TREASURY DEPARTMENT
Fiscal Service
Financial Management Service:
Federal nontax payments to collect delinquent debts owed to States; comments due by 3-12-07; published 1-11-07 [FR E7-00127]

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Medical care or services; reasonable charges; comments due by 3-15-07; published 2-13-07 [FR E7-02391]

LIST OF PUBLIC LAWS

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H.R. 742 / Public Law 110–6

Antitrust Modernization Commission Extension Act of 2007 (Feb. 26, 2007; 121 Stat. 61; 1 page)

Last List February 20, 2007

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