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# Contents

**Federal Register**

Vol. 72, No. 66

Friday, April 6, 2007

**Agricultural Marketing Service**
PROPOSED RULES
Onions grown in South Texas, 17037–17042

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Foreign Agricultural Service
*See* Forest Service

**Air Force Department**
NOTICES
Privacy Act; systems of records, 17136–17137

**Blind or Severely Disabled, Committee for Purchase From People Who Are**
*See* Committee for Purchase From People Who Are Blind or Severely Disabled

**Census Bureau**
NOTICES
Census 2010:
Census Block Group Program; proposed criteria, 17337–17343
Census County Division and Equivalent Entities Program; proposed criteria, 17324–17326
Census Designated Place Program; proposed criteria, 17326–17329
Census Tract Program; proposed criteria, 17329–17337

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 17168–17169

**Centers for Medicare & Medicaid Services**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17169–17170

**Coast Guard**
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Milwaukee Captain of Port Zone, WI, 17024–17025
Regattas and marine parades:
Tulip Time Fireworks and Water Ski Show, 17024
PROPOSED RULES
Drawbridge operations:
Virginia, 17065–17068
Regattas and marine parades:
Lake Michigan Captain of Port zone marine events, 17062–17065

**Commerce Department**
*See* Census Bureau
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* Minority Business Development Agency
*See* National Institute of Standards and Technology
*See* National Oceanic and Atmospheric Administration

**Committee for Purchase From People Who Are Blind or Severely Disabled**
NOTICES
Procurement list; additions and deletions, 17093–17094

**Comptroller of the Currency**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17221–17225

**Defense Department**
*See* Air Force Department
NOTICES
Meetings:
Care for America's Returning Wounded Warriors, President's Commission, 17136

**Education Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17137–17139
Grants and cooperative agreements; availability, etc.:
Education and special education research and research training support programs, 17346–17351
Safe and drug-free schools programs—
Readiness and Emergency Management for Schools Grant Program, 17139–17143

**Employment and Training Administration**
NOTICES
Adjustment assistance; applications, determinations, etc.:
Robert Bosch Corp. et al., 17183–17185
Yamaha Music Manufacturing Inc., 17185
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act and Wagner-Peyser Act—
Adult, youth, dislocated worker, employment service, workforce information, and work opportunity tax credit, etc., 17185–17194

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Environmental statements; record of decision:
Orlando Gasification Project, FL, 17143–17149

**Environmental Protection Agency**
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Rhode Island, 17025–17027
Solid wastes:
Hazardous waste; identification and listing—
Exclusions, 17027–17032
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Rhode Island, 17068
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pesticide treated food packaging, 17068–17071
NOTICES
Environmental statements; availability, etc.:
Agency comment availability, 17156–17157

Agency weekly receipts, 17157–17158
Meetings:
Environmental Policy and Technology National Advisory Council, 17158
Science Advisory Board, 17158–17159

**Federal Aviation Administration**
**RULES**
Airworthiness directives:
General Electric Co., 16998–17001
Raytheon Aircraft Co., 16990–16998
Commercial space transportation:
Reusable suborbital rockets; experimental permits, 17001–17024
**PROPOSED RULES**
Airworthiness directives:
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 17042–17044
Sicma Aero Seat, 17045–17046

**Federal Deposit Insurance Corporation**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17222–17224

**Federal Energy Regulatory Commission**
**NOTICES**
Electric rate and corporate regulation combined filings, 17150–17152
Electric utilities (Federal Power Act):
Other Federal agencies costs submissions; cost submittals review; questions and comments request, 17152
Environmental statements; availability, etc.:
Grand River Dam Authority, 17152–17153
Environmental statements; notice of intent:
Boardwalk Pipeline Partners, LP, 17153–17155
Hydroelectric applications, 17155–17156
Meetings:
Downeast LNG, Inc.; technical conference, 17156
*Applications, hearings, determinations, etc.:*
Brookfield Energy Marketing US LLC, 17149
Citigroup Energy Canada ULC, 17149–17150
Saguaro Power Co., LP, 17150

**Federal Housing Finance Board**
**NOTICES**
Meetings; Sunshine Act, 17159

**Federal Motor Carrier Safety Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17218–17219

**Federal Reserve System**
**RULES**
Depository institutions; reserve requirements (Regulation D):
Bankers' banks; exemption from reserve requirements; criteria; interpretation, 16987–16990
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17222–17224

**Foreign Agricultural Service**
**NOTICES**
Adjustment assistance; applications, determinations, etc.:
Burley Tobacco Growers Cooperative Association and Burley Stabilization Corp., 17091
California Avocado Commission, 17091
Michigan natural honey apiarists, 17091
National Grape Cooperative Association, 17091–17092

**Foreign-Trade Zones Board**
**NOTICES**
*Applications, hearings, determinations, etc.:*
North Carolina
Volvo Construction Equipment North America, Inc.; construction equipment manufacture, 17094–17095

**Forest Service**
**NOTICES**
Appealable decisions; legal notice:
Southwestern Region, 17092–17093
Meetings:
Willamette Province Advisory Committee, 17093

**Government Ethics Office**
**RULES**
Executive branch regulations:
Charitable payments in lieu of honoraria; conforming technical amendments and obsolete regulations removed, 16985–16987

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Substance Abuse and Mental Health Services Administration
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17159–17160
Grants and cooperative agreements; availability, etc.:
Embryo donation and/or adoption projects, 17161–17168

**Homeland Security Department**
*See* Coast Guard
*See* National Communications System
*See* U.S. Citizenship and Immigration Services
**NOTICES**
Privacy Act; systems of records, 17172–17176

**Housing and Urban Development Department**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 17177

**Interior Department**
*See* Land Management Bureau
*See* Minerals Management Service
*See* National Park Service
**NOTICES**
Meetings:
Blackstone River Valley National Heritage Corridor Commission, 17177

**Internal Revenue Service**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17225–17227

**International Trade Administration**
**NOTICES**
Antidumping:
Frozen warmwater shrimp from—
China and Vietnam, 17095–17100

Various countries, 17100–17110
Oil country tubular goods from—
Mexico, 17110–17111

**Labor Department**
*See* Employment and Training Administration
*See* Occupational Safety and Health Administration

**Land Management Bureau**
**NOTICES**
Realty actions; sales, leases, etc.:
Idaho, 17177–17178
New Mexico, 17179–17180
Survey plat filings:
Colorado, 17180

**Minerals Management Service**
**PROPOSED RULES**
Outer Continental Shelf Lands Act; open and nondiscriminatory access to oil and gas pipelines, 17047–17062

**Minority Business Development Agency**
**NOTICES**
Meetings:
Asian Americans and Pacific Islanders, President's Advisory Commission, 17111–17112

**National Communications System**
**NOTICES**
Meetings:
National Security Telecommunications Advisory Committee, 17176

**National Highway Traffic Safety Administration**
**RULES**
Motor vehicle safety standards:
Electronic stability control systems; controls and displays, 17236–17322

**National Institute of Standards and Technology**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Neutron Research and Neutron Scattering Financial Assistance Program and Sample Environment Equipment Financial Assistance Program, 17112–17116

**National Oceanic and Atmospheric Administration**
**PROPOSED RULES**
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic sea scallop, 17076–17085
State and Federal commercial fishing vessel permit programs reconciliation, 17085–17090
International fishing regulations:
Pacific halibut—
Guided sport charter vessel fishing; harvest restrictions, 17071–17076
**NOTICES**
Endangered and threatened species permit applications, 17116–17117
Environmental statements; availability, etc.:
Beaufort and Chukchi Seas, AK; seismic surveys, 17117–17118
Marine mammals:
Incidental taking; authorization letters, etc.—
ConocoPhillips Alaska, Inc. and Union Oil Co. of California; Cook Inlet, AK; open-water seismic operations; small numbers of marine mammals, 17118–17133
Meetings:
Mid-Atlantic Fishery Management Council, 17133
National Marine Fisheries Service and State Marine Fisheries Directors, 17133–17134
Reports and guidance documents; availability, etc.:
Water quality and stream habitat protection manual for county road maintenance in northwestern California watersheds, 17134–17135
Scientific research permit applications, determinations, etc., 17135–17136

**National Park Service**
**NOTICES**
Environmental statements; availability, etc.:
John Day Fossil Beds National Monument, OR; general management plan, 17180–17181
Environmental statements; notice of intent:
Pinnacles National Monument, CA; general management plan, 17181–17182
National Register of Historic Places; pending nominations, 17182–17183

**Nuclear Regulatory Commission**
**NOTICES**
*Applications, hearings, determinations, etc.:*
BWX Technologies, Inc., 17195
Global Nuclear Fuel-Americas, LLC, 17196–17199
Honeywell International, Inc., 17199–17202
Westinghouse Electric Co., LLC, 17202–17205

**Occupational Safety and Health Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17194–17195

**Pipeline and Hazardous Materials Safety Administration**
**NOTICES**
Meetings:
Pipelines safety—
Technical Pipeline Safety Standards Committee and Technical Hazardous Liquid Pipeline Safety Standards Committee; cancellations, 17219
Pipeline safety:
Waiver petitions—
Freeport LNG, 17220
Sabine Pass LNG, 17219–17220

**Public Debt Bureau**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17228–17229

**Securities and Exchange Commission**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 17205–17206
Investment Company Act of 1940:
First Trust Exchange-Traded Fund et al., 17207–17208
Self-regulatory organizations; proposed rule changes:
NYSE Arca, Inc., 17209–17210
Options Clearing Corp., 17210–17212
Philadelphia Stock Exchange, Inc., 17212–17215

**Social Security Administration**
NOTICES
Privacy Act; computer matching programs, 17215–17216

**State Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17216
Culturally significant objects imported for exhibition:
Mythic Beasts, 17217

**Substance Abuse and Mental Health Services Administration**

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17170–17172

**Surface Transportation Board**
RULES
Fees:
Licensing and related services; 2007 update, 17032–17036
NOTICES
Railroad operation, acquisition, construction, etc.:
BNSF Railway Co., 17220–17221
Orange County Transportation Authority, 17221

**Susquehanna River Basin Commission**
NOTICES
Commission actions, 17217

**Thrift Supervision Office**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17222–17224

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* National Highway Traffic Safety Administration
*See* Pipeline and Hazardous Materials Safety Administration
*See* Surface Transportation Board

**Treasury Department**
*See* Comptroller of the Currency
*See* Internal Revenue Service
*See* Public Debt Bureau
*See* Thrift Supervision Office

**U.S. Citizenship and Immigration Services**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 17176–17177

**Veterans Affairs Department**
NOTICES
Privacy Act; systems of records, 17229–17233

---

**Separate Parts In This Issue**

**Part II**
Transportation Department, National Highway Traffic Safety Administration, 17236–17322

**Part III**
Commerce Department, Census Bureau, 17324–17343

**Part IV**
Education Department, 17346–17351

---

**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.

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## CFR PARTS AFFECTED IN THIS ISSUE

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


**5 CFR**
2634 ..... 16985
2635 ..... 16985
2636 ..... 16985

**7 CFR**
**Proposed Rules:**
959 ..... 17037

**12 CFR**
204 ..... 16987

**14 CFR**
39 (2 documents) ..... 16990, 16998
401 ..... 17001
404 ..... 17001
405 ..... 17001
406 ..... 17001
413 ..... 17001
415 ..... 17001
420 ..... 17001
431 ..... 17001
437 ..... 17001
**Proposed Rules:**
39 (2 documents) ..... 17042, 17045

**30 CFR**
**Proposed Rules:**
291 ..... 17047

**33 CFR**
100 ..... 17024
165 ..... 17024
**Proposed Rules:**
100 ..... 17062
117 ..... 17065

**40 CFR**
62 ..... 17025
261 ..... 17027
**Proposed Rules:**
62 ..... 17068
180 ..... 17068

**49 CFR**
571 ..... 17236
585 ..... 17236
1002 ..... 17032

**50 CFR**
**Proposed Rules:**
300 ..... 17071
648 (2 documents) ..... 17076, 17085

# Rules and Regulations

Federal Register
Vol. 72, No. 66
Friday, April 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.

## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Parts 2634, 2635, and 2636

**RINs 3209–AA00, 3209–AA04 and 3209–AA13**

### Removal of Obsolete Regulations Concerning the Inoperative Provisions Regarding Charitable Payments In Lieu of Honoraria and Conforming Technical Amendments

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule; technical amendments and removals.

**SUMMARY:** The Office of Government Ethics is removing obsolete regulatory provisions in its executive branch outside earned income restrictions and ethical conduct standards regulations that were designed to implement the statutory provision regarding charitable payments made in lieu of honoraria, which is no longer legally operative. In addition, OGE is removing a related provision in the branchwide financial disclosure regulation regarding supplemental confidential reporting for such payments. Finally, OGE is making a few technical conforming amendments to reflect these changes.

**DATES:** These technical amendments and removals are effective May 7, 2007.

**ADDRESSES:** Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attn.: Mr. Gressman.

**FOR FURTHER INFORMATION CONTACT:** William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–482–9300; TDD: 202–482–9293; Fax: 202–482–9237.

**SUPPLEMENTARY INFORMATION:** The Ethics Reform Act of 1989 (Pub. L. 101–194) amended the Ethics in Government Act of 1978 (Ethics Act) to bar Government employees from accepting honoraria. See 5 U.S.C. app. 501(b). At the same time, the 1989 Act also contained an exception to this prohibition which permitted employees to direct payment to charitable organizations in lieu of accepting honoraria. See 5 U.S.C. app. 501(c). However, in *National Treasury Employees Union* v. *United States*, 513 U.S. 454 (1995) (the *NTEU* case), the U.S. Supreme Court overturned, as to most executive branch employees, the general honorarium prohibition in the Ethics Act, finding it to be unconstitutional. Subsequently, the Department of Justice determined that because of the scope of the Supreme Court decision, the statutory ban on receipt of honoraria was inoperative as to all Government employees. See the OGE Memorandum to Designated Agency Ethics Officials (DAEOs), General Counsels and Inspectors General of February 28, 1996 (# DO–96–012); a copy of that OGE memorandum, along with the memorandum of the Justice Department, is available in the ''DAEOgrams'' section of the OGE Web site (*http://www.usoge.gov*).

In the late 1990s, OGE removed the executive branch regulatory provisions concerning the overturned honoraria prohibition, along with cross-references thereto in various OGE regulations. See 62 FR 48746–48748 (September 17, 1997), 63 FR 43067–43069 (August 12, 1998), and OGE's Memorandum to DAEOs of August 13, 1998 (# DO–98–023); copies of which are available, respectively, in the Laws & Regulations and DAEOgrams sections of OGE's Web site.

Thereafter, OGE asked the Office of Legal Counsel (OLC) of the Justice Department whether section 501(c) of the Ethics Act remained in effect after the Supreme Court decision. OGE reasoned that because section 501(c) is basically an exception to the honoraria ban, the invalidation of section 501(b) should also nullify section 501(c). In an opinion issued March 1, 2001, OLC concluded that section 501(c) of the Ethics Act is no longer in effect given the *NTEU* case and the close connection between the old honorarium prohibition and the statutory exception for qualifying in lieu of honoraria charitable payments. See OGE's Memorandum to DAEOs (# DO–01–011 of March 15, 2001) announcing, in pertinent part, the OLC opinion and a planned OGE regulatory change as a result; both documents are available, respectively, in the ''Laws & Regulations'' and ''DAEOgrams'' sections of OGE's Web site (*http://www.usoge.gov*).

In this rulemaking, OGE is removing from its executive branch regulations various provisions implementing the now-defunct exception in section 501(c) of the Ethics Act. First, in 5 CFR part 2636, which addresses limitations on outside earned income, employment and affiliations for certain noncareer employees, OGE is removing current paragraph (b)(7) of § 2636.303. OGE is rescinding this paragraph, which cites sections 501(c) and 505 (defining certain terms) of the Ethics Act, because it excludes payments to charitable organizations in lieu of honoraria from the terms ''outside earned income'' and ''compensation'' for purposes of part 2636. (OGE is also redesignating current paragraph (b)(8) of § 2636.303 as new paragraph (b)(7).) Likewise, OGE is removing a related sentence in paragraph (c) of § 2636.303 that provides that such payments to charitable organizations are not received in violation of any of the limitations in subpart C of part 2636, since they are not outside earned income or compensation. In light of that change, OGE is making a conforming change to the wording of the following sentence of that paragraph. Moreover, OGE is removing current paragraph (a)(2)(i) of § 2636.103, which provides that part 2636 advisory opinions cannot be obtained regarding whether particular entities are qualified charitable organizations for purposes of the in lieu of honoraria payments regulatory provision that OGE is now removing from current paragraph (b)(7) of § 2636.303.

In addition, OGE is removing from 5 CFR 2635.203(f)(2) of the executive branch standards of ethical conduct, which defines gifts that are solicited or accepted indirectly, an exception for payments to charities in lieu of honoraria (and which contains a citation to a provision previously removed from the part 2636 regulation). OGE is also updating a citation in 5 CFR 2635.804(c)(1) to paragraph (b) of § 2636.303 to reflect the above-noted revisions to that paragraph.

Finally, OGE never activated for the executive branch the related provision of the Ethics Act on supplemental confidential reporting of information about payments to charitable

organizations in lieu of honoraria, 5 U.S.C. app., 102(a)(1)(A). In this rulemaking, OGE is removing the residual inactive confidential reporting provision currently found at paragraph (a)(2) of 5 CFR 2634.302 of its executive branch financial disclosure regulation (and is consequently redesignating the other parts of paragraph (a) of that section), since that regulatory provision is no longer needed in light of these developments.

**Matters of Regulatory Procedure**

*Administrative Procedure Act*

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and opportunity for public comment as to these final rule revisions. The notice and comment are being waived because these technical amendments and removals of certain provisions in the OGE branchwide regulations being revised concern matters of agency organization, practice and procedure. Furthermore, it is in the public interest that the obsolete provisions be removed at this time.

*Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

*Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking, involving technical amendments and removals, just eliminates the last regulatory vestiges (still unactivated) of a structure (old OMB paperwork control #3209–0004, now expired) which OGE had developed internally but never made effective in the executive branch, for supplemental confidential reporting of payments in lieu of honoraria to charitable organizations. The old inactive regulatory provisions being removed are no longer needed.

*Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

*Congressional Review Act*

The Office of Government Ethics has determined that this rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law when the rule is transmitted to the Office of the **Federal Register** for publication.

*Executive Order 12866*

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order. Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to these final rule revisions, which are being codified in revised 5 CFR parts 2634, 2635 and 2636, notes the legal basis and benefits of, as well as the need for, the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the Federal Government in administering these amended regulations, since the revisions only remove obsolete regulatory provisions concerning a provision of the Ethics Act on in lieu of honoraria payments that is no longer in effect, along with an inactive regulatory provision concerning a related confidential reporting section of the Ethics Act. Finally, this rulemaking is not economically significant under the Executive order and will not interfere with State, local or tribal governments.

*Executive Order 12988*

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

**List of Subjects**

*5 CFR Part 2634*

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

*5 CFR Part 2635*

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

*5 CFR Part 2636*

Conflict of interests, Government employees, Penalties.

Approved: March 26, 2007.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

■ For the reasons set forth in the preamble, the Office of Government Ethics is amending parts 2634, 2635 and 2636 of chapter XVI of 5 CFR as follows:

## TITLE 5—ADMINISTRATIVE PERSONNEL

### CHAPTER XVI—OFFICE OF GOVERNMENT ETHICS

### PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

#### Subpart C—Contents of Reports

**§ 2634.302 [Amended]**

■ 2. Section 2634.302 is amended by:
■ A. Removing paragraph (a)(2);
■ B. Redesignating paragraph (a)(1) as paragraph (a); and
■ C. In redesignated paragraph (a), further designate paragraphs (i) through (iv) as paragraphs (a)(1) through (a)(4), respectively.

### PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

■ 3. The authority citation for part 2635 continues to read as follows:

**Authority:** 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

#### Subpart B—Gifts From Outside Sources

**§ 2635.203 [Amended]**

■ 4. Section 2635.203 is amended by removing the phrase ''or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this chapter'' before the period at the end of paragraph (f)(2).

## Subpart H—Outside Activities

### § 2635.804 [Amended]

■ 5. Section 2635.804 is amended by removing the citation ''§ 2636.303(b)(8)'' in paragraph (c)(1) and adding in its place the citation ''§ 2636.303(b)(7)''.

## PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

■ 6. The authority citation for part 2636 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

## Subpart A—General Provisions

■ 7. Section 2636.103 is amended by revising paragraph (a)(2) to read as follows:

### § 2636.103 Advisory opinions.

(a) * * *

(2) An advisory opinion may not be obtained for the purpose of establishing whether a noncareer employee who is subject to the restrictions in subpart C of this part may receive compensation for teaching. An advisory opinion issued under this section may not be substituted for the advance written approval required by § 2636.307 of this part.

* * * * *

## Subpart C—Outside Earned Income Limitation and Employment and Affiliations Restrictions Applicable to Certain Noncareer Employees

■ 8. Section 2636.303 is amended by:

■ A. Adding the word ''or'' following the semicolon at the end of paragraph (b)(6);

■ B. Removing paragraph (b)(7);

■ C. Redesignating paragraph (b)(8) as new paragraph (b)(7); and

■ D. Removing the second sentence of the undesignated text at the end of paragraph (c) and revising the last sentence thereof.

The revision reads as follows:

### § 2636.303 Definitions.

* * * * *

(c) * * *

* * * * *

* * * Also, compensation or outside earned income donated to a charitable organization is received by the employee.

[FR Doc. E7–6228 Filed 4–5–07; 8:45 am]

BILLING CODE 6345–02–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 204

**[Regulation D; Docket No. R–1262]**

## Reserve Requirements of Depository Institutions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors is revising its 1980 interpretation of Regulation D (Reserve Requirements of Depository Institutions) setting forth criteria for the ''bankers' bank'' exemption from reserve requirements. The interpretation sets forth the standards that the Board uses in applying the statutory and regulatory requirements for the bankers' banks exemption to specific institutions. The revised interpretation specifies that the Board may determine, on a case-by-case basis, whether certain entities not already expressly listed in the interpretation may become customers to a limited extent of bankers' banks that remain exempt from reserve requirements.

**DATES:** *Effective Date:* May 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Heatherun Allison, Senior Counsel, (202) 452–3565; or Kara Handzlik, Attorney, (202) 452–3852, Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Background

Section 19(b) of the Federal Reserve Act (Act) imposes reserve requirements on certain deposits and other liabilities of depository institutions for monetary policy purposes. 12 U.S.C. 461(b). The Board's Regulation D, ''Reserve Requirements of Depository Institutions'' (12 CFR part 204), implements Section 19(b). Section 19(b)(9) of the Act, commonly referred to as the ''bankers' bank exemption,'' exempts from reserve requirements certain institutions that would otherwise be subject to them. Specifically, Section 19(b)(9) provides that reserve requirements ''shall not apply with respect to any financial institution which—(A) is organized solely to do business with other financial institutions; (B) is owned primarily by the financial institutions with which it does business; and (C) does not do business with the general public.'' 12 U.S.C. 461(b)(9). ''Bankers' banks'' for purposes of Section 19(b)(9) of the Act and Regulation D include bankers' banks for commercial banks and thrifts chartered under state or federal law authorities as well as corporate credit unions.

### II. Issuance of Original Interpretation

In November 1980, the Board issued an interpretation of Regulation D specifying certain standards to be used in determining whether institutions qualify for the bankers' bank exemption from reserve requirements. 12 CFR 204.121 (Interpretation). Under the Interpretation, an institution may be regarded as ''organized solely to do business with other depository institutions even if, as an incidental part to [sic] its activities, it does business to a limited extent with entities other than depository institutions.'' *Id.* In addition, a depository institution will be regarded as ''being owned primarily by the institutions with which it does business'' if ''75 per cent or more of its capital is owned by other depository institutions * * * regardless of the type of depository institution.'' *Id.*

Finally, the Interpretation states that a depository institution will be regarded as ''not do[ing] business with the general public'' if the depository institution has satisfied two requirements. First, the depository institution must limit the range of customers with which it does business to: depository institutions; subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are required at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; and depository institution trade associations. Second, the depository institution's loans to or investment in that range of customers (other than depository institutions) cannot exceed 10 percent of total assets, and the extent to which it receives shares or deposits from or issues other liabilities to those same entities (other than depository institutions) cannot exceed 10 percent of total liabilities or net worth. *Id.*

### III. Proposed Revisions

On August 14, 2006, the Board published for comment a proposal to revise the Interpretation to specify that

the Board may determine, on a case-by-case basis, whether certain entities not already expressly listed in the Interpretation may become customers to a limited extent of bankers' banks. (71 FR 46411.) This proposal was issued pursuant to Section 19(a) of the Act, which authorizes the Board to define the terms used in that section and to prescribe such regulations as it may deem necessary to effectuate the purposes of the section and to prevent evasions thereof.

The Board proposed to amend the Interpretation by adding to the list of non-depository institution customers with which bankers' banks may do business and remain exempt from reserve requirements the language ''and such others as the Board may determine on a case-by-case basis consistent with the purposes of the Act and the bankers' bank exemption.'' The proposal would require that such customers still be subject to the percentage limitations specified in the Interpretation relating to ownership and doing business (*i.e.*, not more than 25 percent of bankers' bank capital may be owned by non-depository institution customers and bankers' bank business with non-depository institution customers may not exceed 10 percent of total assets/liabilities). The Board did not propose to specify any standards under which it would make such case-by-case determinations. The proposal stated, however, that the Board would not expect to exercise the authority under the proposal to expand the range of permissible bankers' bank customers to include the general public. The proposal also stated that the Board expects to obtain more experience over time with requests for determinations under the proposal and, based on that experience, may find that proposing further amendments to the Interpretation (such as specifications or standards by which the Board would make such determinations) are warranted. Comment was solicited on all aspects of the proposal.

## IV. Analysis of Comments

*Overview of Comments Received*

The Board received seventeen comments on the proposal. Commenters included five bankers' banks (including corporate credit unions); five associations or councils representing bankers' banks, corporate credit unions, or community banks; two individuals not associated with any institution, one professor, one bank, one credit union, one financial holding company, and one bank holding company. Two commenters fully supported the proposal, while eleven commenters supported the proposal but raised concerns and/or offered suggestions about various aspects of the proposal. Three commenters opposed the proposal. One commenter did not address the issue set forth by proposal but instead commented on a separate aspect of Regulation D.[1]

A. Structure of Bankers' Banks; Competitive Concerns

A few commenters favored the flexibility that would be given to the Board so that the Board could allow banks to structure their operations optimally and increase services to the financial community. Many commenters, however, were concerned that the proposal would erode or eliminate the unique characteristics of a bankers' bank. Some of these commenters stated that adopting the proposal would increase competition between bankers' banks and their bank customers. These commenters emphasized that bankers' banks are not established to compete with community banks, but instead established to do business with community banks.

One commenter stated that the bankers' banks should not be permitted to increase their activities to the point where the bank clients and shareholders of bankers' banks perceive these activities as directly competing with their own interest. This commenter stressed that the term bankers' bank should be ''restricted to banks [that] have chosen to be owned by banks, to offer services only to other banks and to embrace the concept of serving only community banks so that they in turn can compete effectively with the largest financial institutions.'' On the other hand, two commenters suggested increasing the extent to which bankers' banks could do business with non-depository institution customers while remaining exempt from reserve requirements. These commenters urged the Board to increase the percentage limitations specified in the Interpretation relating to ownership and doing business.

The Board believes that adopting the proposal is not likely to erode the unique characteristics of bankers' banks. The Board cannot under Regulation D authorize activities that are not authorized by a bankers' bank's chartering authority; rather, the Board can determine only whether a bankers' bank may be exempt from reserve requirements.[2] Any given bankers' bank activity or customer must be authorized by the bankers' bank chartering authority before the Board can consider whether a bankers' bank may remain exempt from reserve requirements while undertaking such an activity or serving such a customer. In addition, as stated in the proposal, the Board does not anticipate permitting the reserve exemption to apply to a bankers' bank that does business with the general public.

The Board is not revising the percentage limitations on the extent to which bankers' banks may serve non-depository institution customers while remaining exempt from reserve requirements. The Board does not believe that it is appropriate to increase those percentage limitations because to do so would reduce the extent to which bankers' banks serve primarily depository institution customers. Any new non-depository institution customers that would be permitted under the revised Interpretation will still be subject to the existing percentage limitations specified in the Interpretation relating to ownership and doing business.

Finally, the purpose of reserve requirements under Section 19 is to facilitate the conduct of monetary policy. Accordingly, the Board believes that exemptions from reserve requirements are to be narrowly construed so as not to impede the effective conduct of monetary policy. The more a bankers' bank's activities resemble those of a commercial bank or other depository institution, the less appropriate the reserve requirement exemption would be for that bankers' bank. The Board believes that these considerations will keep the bankers' bank exemption from reserve requirements from undue expansion under the revised Interpretation.

B. Determination Process

Some commenters raised concerns about the process by which the Board would make determinations under the proposal. Many of these commenters suggested that the Board publish requests for determinations and permit public comment on them. Among the commenters' reasons for this request was so that bankers' banks chartered by other authorities could concomitantly seek authorization of the same activities.

[1] This commenter was concerned with § 204.2(d)(2) of Regulation D (12 CFR 204.2(d)(2)) and ''how consumer banking institutions are interpreting the Regulation to allow them to collect 'excess transaction fees' from banking patrons.''

[2] For a bankers' bank that is a state member bank, the Board would have to approve any change in the general character of its business or in the scope of the corporate powers it exercises in accordance with Section 208.3(d)(2) of Regulation H (Membership of State Banking Institutions in the Federal Reserve System, 12 CFR part 208).

Other commenters urged the Board to disclose the business reasons giving rise to requests for determinations as well as the Board's reasoning in granting any such requests. A few commenters asked that the Board issue its determinations in the form of an order. These commenters argued that this would afford the bankers' bank industry the opportunity to learn the ''business rationale and the business opportunity'' contained in such requests and orders until formal guidelines have been established by the Board.

One commenter asked that the Board clearly set forth in the revised Interpretation the standards which will be used in making its future case-by-case determinations to preclude arbitrary or capricious determinations. On the other hand, another commenter urged the Board to relax standards for granting such requests and to clarify whether all entities with which the bankers' bank is permitted to do business under the Interpretation will qualify as ''financial institutions.''

One commenter urged the Board to specify the length of time for making determinations under the revised Interpretation, claiming that the flexibility granted by the proposal could be offset by overly lengthy determination time periods. This commenter also urged the Board to address the extent to which individual Federal Reserve Banks will be involved with the decision making process, asserting that the individual Reserve Banks are in the best position to develop understanding of a company's risk profile and management team which is necessary for making such determinations.

The Board anticipates that determinations under the revised Interpretation will generally be made public and will include a description of the determination, the business and other reasons behind the request, and the Board's reasoning in granting (or denying) the request. Although the Board does not anticipate publishing requests for such determinations prior to the time that the determination is made, the Board anticipates that all requests will be handled in a timely manner and that the input of the appropriate Federal Reserve Bank or Banks, if any, will be solicited as part of that process.

Finally, the Board continues to believe that publishing more detailed criteria by which the Board would review requests under the revised Interpretation would be premature at this time. As noted above, the Board cannot under Regulation D authorize activities that are not authorized by a bankers' bank's chartering authority. The Board cannot predict the kinds of changes that may or may not occur in activities or customers that chartering authorities may permit. Accordingly, the Board cannot predict the details of the criteria under which it would evaluate such activities or customers for consistency with the Act and the purposes of the bankers' bank exemption. Over time, however, the Board expects that it may be possible after further experience with requests under the Interpretation to articulate standards or guidelines for the further exercise of that authority by the Board.

C. Miscellaneous

One commenter supported the proposal, but asked for clarification of the ''consistent with the purposes of the Act and the bankers' bank exemption'' language. Another commenter asked the Board to clarify the phrase ''do business with'' as that phrase appears in the Act and the Interpretation. As noted above, the Board believes that it cannot predict the manner in which chartering authorities may change the permissible activities and customers of bankers' banks. Therefore, the Board believes that it cannot at this time provide greater specificity in these areas. As also noted above, however, the Board expects that it may be able to provide greater specificity in the future as an increasing amount of experience with requests and determinations under the proposal is obtained.

One commenter supported the proposal but believed that the Board inadvertently removed language from the original Interpretation when issuing the proposal for comment. The Board has corrected this inadvertent omission in the final Interpretation.

Another commenter suggested that adopting the proposal would make the regulation less specific and that this could impair any relief granted to bankers' banks by adopting the proposal. This commenter also stated that the proposal violates ''Plain Language'' provisions of the Gramm-Leach-Bliley Act (Section 722 of Pub. L. 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999)). Finally, this commenter argued that the proposal provides such expansive authority to the Board that there can be little Congressional oversight of the Board's activities in this area. As noted above, the Board cannot itself expand bankers' bank authority to serve new kinds of customers and undertake new lines of activities. As also noted above, the Board believes that it can only issue determinations under the revised Interpretation that are consistent with the purposes of Section 19 of the Act and of the bankers' bank exemption, and that the revised Interpretation clearly states the Board's authority and objectives. As also noted above, the Board does not anticipate exercising its authority under the revised Interpretation to expand the reserves exemption to bankers' banks that do business with the general public. As further noted above, the Board anticipates that determinations made under the revised Interpretation will be publicly available. For these reasons, the Board does not believe that the Interpretation poses the risks or violations suggested by the commenter.

## V. Regulatory Analysis

### *A. Regulatory Flexibility Act*

In accordance with Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Board has reviewed the proposed amendments to the Interpretation of Regulation D. For the reasons set out below, the Board certifies that the amendments to the Interpretation will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the objectives of the proposal.* The Board is revising its Interpretation of Regulation D in order to authorize the Board to determine, on a case-by-case basis, whether non-depository institutions that are not already listed in the Interpretation may be bankers' bank customers without the bankers' bank losing its exemption from reserve requirements. Section 19 of the Act was enacted to impose reserve requirements on certain deposits and other liabilities of depository institutions for monetary policy purposes. Section 19 exempts certain institutions from reserve requirements as ''bankers' banks'' provided the institutions meet the characteristics specified in the statute. Section 19 also authorizes the Board to promulgate such regulations as it may deem necessary to effectuate the purposes of the section. The Board believes the revisions to the Interpretation are within Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of section 19 of the Act.

2. *Public comments in response to initial regulatory flexibility analysis.* There were no public comments in response to the initial regulatory flexibility analysis.

3. *Description and estimate of number of small entities to which revised Interpretation will apply.* The Board estimates that there are eleven bankers' banks qualifying as ''small entities'' to which the revised Interpretation could apply.

4. *Projected reporting, recordkeeping, and other compliance requirements.* There are no reporting, recordkeeping, or other compliance requirements associated with the revised Interpretation.

5. *Minimizing significant economic impact of the revised Interpretation on small entities.* There were no public comments that suggested a significant alternative that would minimize the impact of the proposal on small entities. There are eleven bankers' banks qualifying as ''small entities'' under RFA. The revised Interpretation provides all bankers' banks with the ability to maintain their exemption from reserve requirements, if any, while undertaking certain additional bankers' bank activities or customers as authorized by their chartering authorities. No bankers' bank is required to seek a determination under the revised Interpretation. The revised Interpretation imposes no economic burdens on bankers' banks, and instead only offers the opportunity to bankers' banks that are exempt from reserve requirements to maintain the economic benefits of that exemption under the specified circumstances. Accordingly, the Board believes that the revised Interpretation will not have a significant impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.10), the Board reviewed the proposal under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposal contains no requirements subject to the PRA.

**VI. Plain Language**

The Board received one comment on whether the proposal was in plain language. This commenter stated that the Board's failure to propose standards for its exercise of authority under the proposal amounted to a failure to comply with the ''Plain Language'' provisions of the Gramm-Leach-Bliley act. This commenter stated that the Board should instead say that it proposes to do whatever it wants given its view of the purposes of the Act. For the reasons stated above, the Board believes that the revised Interpretation is stated in plain language to the greatest extent possible at this point in time. As also stated above, the Board expects to publish further guidance and standards as it obtains additional experience in the future with requests for determinations under the revised Interpretation. Accordingly, the Board believes that the revised Interpretation complies with applicable plain language requirements.

**List of Subjects in 12 CFR Part 204**

Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

## PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. The second sentence of paragraph (a)(2)(iii) of § 204.121 is revised to read as follows:

**§ 204.121 Bankers' banks.**

(a) * * *

(2) * * *

(iii) * * * First, the range of customers with which the institution does business must be limited to depository institutions, including subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; depository institution trade associations; and such others as the Board may determine on a case-by-case basis consistent with the purposes of the Act and the bankers' bank exemption. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 3, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E7–6473 Filed 4–5–07; 8:45 am]

BILLING CODE 6210–02–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2006–25105; Directorate Identifier 2006–CE–33–AD; Amendment 39–15016; AD 2007–06–01 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** We are clarifying information contained in Airworthiness Directive (AD) 2007–06–01, which supersedes AD 62–24–01 and applies to all Raytheon Aircraft Company (RAC) Beech Models 45 (YT–34), A45 (T–34A, B45), and D45 (T–34B) airplanes. AD 2007–06–01 currently requires you to repetitively inspect, using the eddy current method, the front and rear horizontal stabilizer spars for cracks and replace any cracked stabilizer. We inadvertently left out the language in this AD that required replacement of any horizontal stabilizer spar found cracked prior to further flight although the procedures in the appendix made reference to corrective action. The replacement information was contained in the notice of proposed rulemaking (NPRM). This document adds this information already proposed back into the AD. We are issuing this AD to prevent failure of the front and/or rear horizontal stabilizer spars caused by fatigue cracks. This failure could result in stabilizer separation and loss of control of the airplane.

**DATES:** This AD becomes effective on April 16, 2007.

**ADDRESSES:** To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–25105; Directorate Identifier 2006–CE–33–AD.

**FOR FURTHER INFORMATION CONTACT:** T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

## Discussion

On March 5, 2007, we issued AD 2007–06–01, Amendment 39–14982 (72 FR 10909, March 12, 2007), to supersede AD 62–24–01. AD 2007–06–01 retained inspections of the front and rear horizontal stabilizer spars for cracks, but changed the inspection method from the dye penetrant method to the surface eddy current method.

We inadvertently left out the language in AD 2007–06–01 that required replacement of any horizontal stabilizer spar found cracked prior to further flight although the procedures in the appendix made reference to corrective action. The replacement information was contained in the NPRM.

Consequently, the FAA sees a need to clarify AD 2007–06–01 to assure that any cracked horizontal stabilizer spar is replaced prior to further flight.

## Correction of Publication

This document clarifies AD 2007–06–01 by incorporating the replacement language that was proposed in the NPRM and adds the amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

Since this action only clarifies the intent of what was originally proposed in the NPRM, it has no adverse economic impact and imposes no additional burden on any person than was already proposed. Therefore, the FAA has determined that prior notice and opportunity for public comment are unnecessary.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–06–01, Amendment 39–14982 (72 FR 10909, March 12, 2007), and adding the following new AD:

**2007–06–01 R1 Raytheon Aircraft Company:** Amendment 39–15016; Docket No. FAA–2006–25105; Directorate Identifier 2006–CE–33–AD.

**Effective Date**

(a) This AD becomes effective on April 16, 2007.

**Affected ADs**

(b) This AD revises AD 2007–06–01, Amendment 39–14982, which superseded AD 62–24–01, Amendment 39–508.

**Applicability**

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

| Model | Serial Nos. |
|---|---|
| Beech 45 (YT–34) | All. |
| Beech A45 (T34A, B–45) | All. |
| Beech D45 (T–34B) | All. |

**Unsafe Condition**

(d) This AD is intended to prevent failure of the front and/or rear horizontal stabilizer spars caused by fatigue cracks by changing the inspection method from dye penetrant to surface eddy current. This failure could result in stabilizer separation and loss of control of the airplane.

**Compliance**

(e) Using the surface eddy current inspection procedures outlined in the appendix of this AD, inspect the front and rear horizontal stabilizer spars between the butt rib and the inboard end for cracks, unless already done, as presented below. If any crack is found in either spar or the reinforcing doubler during any inspection required by this AD, prior to further flight, replace the stabilizer and continue to repetitively inspect at intervals not to exceed 500 hours time-in-service (TIS).

(1) *If the last inspection of the front and rear horizontal stabilizer spars was done using the surface eddy current method (or FAA-approved equivalent method) to show compliance with AD 62–24–01 and/or to show compliance with the alternative method of compliance (AMOC) to AD 2004–25–51:* Repetitively inspect thereafter at intervals not to exceed 500 hours TIS.

(2) *If the last inspection of the front and rear horizontal stabilizer spars required by AD 62–24–01 was done using the dye penetrant method:* Inspect initially as presented in the table below and repetitively thereafter at intervals not to exceed 500 hours TIS:

| *If* | *Then* |
|---|---|
| (i) Less than 200 hours TIS have passed since the last inspection required by AD 62–24–01: | Inspect at whichever of the following occurs later:<br>(A) Upon accumulating 200 hours TIS since the last inspection required by AD 62–24–01; or<br>(B) Within the next 6 months after April 16, 2007 (the effective date of this AD). |
| (ii) 200 hours TIS or more have passed since the last inspection required by AD 62–24–01: | Inspect at whichever of the following occurs first, unless paragraph (e)(2)(iii) of this AD applies, as specified below:<br>(A) At the next repetitive inspection required by AD 62–24–01; or<br>(B) Within the next 6 months after April 16, 2007 (the effective date of this AD). |
| (iii) Paragraph (e)(2)(ii) results in the initial surface eddy current inspection becoming mandatory within 30 days after the effective date of this AD: | Inspect within the next 30 days after April 16, 2007 (the effective date of this AD). |

**Alternative Methods of Compliance (AMOCs)**

(f) The Manager, Wichita Aircraft Certification Office, FAA, ATTN: T.N. Baktha, Aerospace Engineer, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 62–24–01 are approved for this AD.

## Appendix to AD 2007–06–01 R1—Surface Eddy Current Inspection Procedure

*Note: This surface eddy current inspection procedure is based on T–34 Spar Corporation TSC 3506, Rev C, dated May 10, 2005. The T–34 Spar Corporation is allowing the use of this procedure to be included in this Airworthiness Directive. Alternative methods of compliance procedures will be allowed, if approved by the Wichita Aircraft Certification Office and requested using the procedures found in 14 CFR 39.19.*

**Purpose**

This procedure is to be used to detect cracks in the inner and outer spars of the front and rear spar assemblies of Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplane stabilizers outside of the steel bushings in the attach holes.

**Area To Be Inspected**

To access the area of inspection, remove the stabilizer from the airplane. The areas to be inspected include the forward and aft surfaces of the inner and outer front and rear spars of the horizontal stabilizers in the areas surrounding each of the attach holes.

**Preparing the Area for Inspection**

Thoroughly clean area to be inspected with solvent (acetone or equivalent) as required until no signs of dirt, grime, or oil remain on the front and rear spars from the closeout former inboard on the forward and aft surfaces of the spars.

Surfaces to be inspected should be smooth and corrosion-free. Any loss of thickness due to corrosion below material thickness tolerance is cause for rejection of the structure. An ultrasonic tester may be used to determine if material thickness has been compromised.

**Equipment Requirements**

Nortec Stavely 2000D Eddy Current Tester or equivalent.

*Probe:* 50–500 KHz, shielded, absolute, 0.071″ diameter (0.090 max. diameter), right angle, pencil style, surface probe, 5″ long, drop or equivalent. Use 0.025′ notch (beyond head) for calibration.

**Personal Requirements**

Technicians with Eddy Current, Level II or Level III per one of the following specifications: ATA specification 105, SNT–TC–1A, or NAS–410 (MIL-std 410E).

**Methods**

Typical Set-up Parameters:

Frequency −350 KHz, Gain Vertical −75 dB, Horizontal −69 dB, Drive-Mid, Filters-Lo Pass-30, Hi Pass-0, Lift off-Horizontal to the left, adjust as required. The most reliable indication (minimum of ½ to 2 graticules) of the smallest observable flaw in the coupon (see the attached Figures) occurs from the notch extending 0.025″ past the edge of the nominal fastener head (total notch length of 0.100″ from the edge of the nominal hole). Install appropriate aluminum guide pin into bushing such that the edge of the guide pin is flush with the edge of the bushing. Using the pin (see the attached Figures) as a guide, circle the area surrounding the steel bushing with the probe and adjacent area (approximately ¼″) to inspect for cracks. Inspect forward and aft surfaces surrounding bushings of each spar.

**Note:** T–34 Spar Corporation, 2800 Airport Road, Hanger A, Ada, Oklahoma 74820 is a source for these coupons and pin.

**Accept/Reject Criteria**

Any repeatable flaw indication is cause for rejection in accordance with the procedure. In the event that any crack is detected, describe the flaw in detail providing sketch as needed and send the information to the Wichita ACO.

**Documentation Requirements**

Record inspection findings in the aircraft logbook.

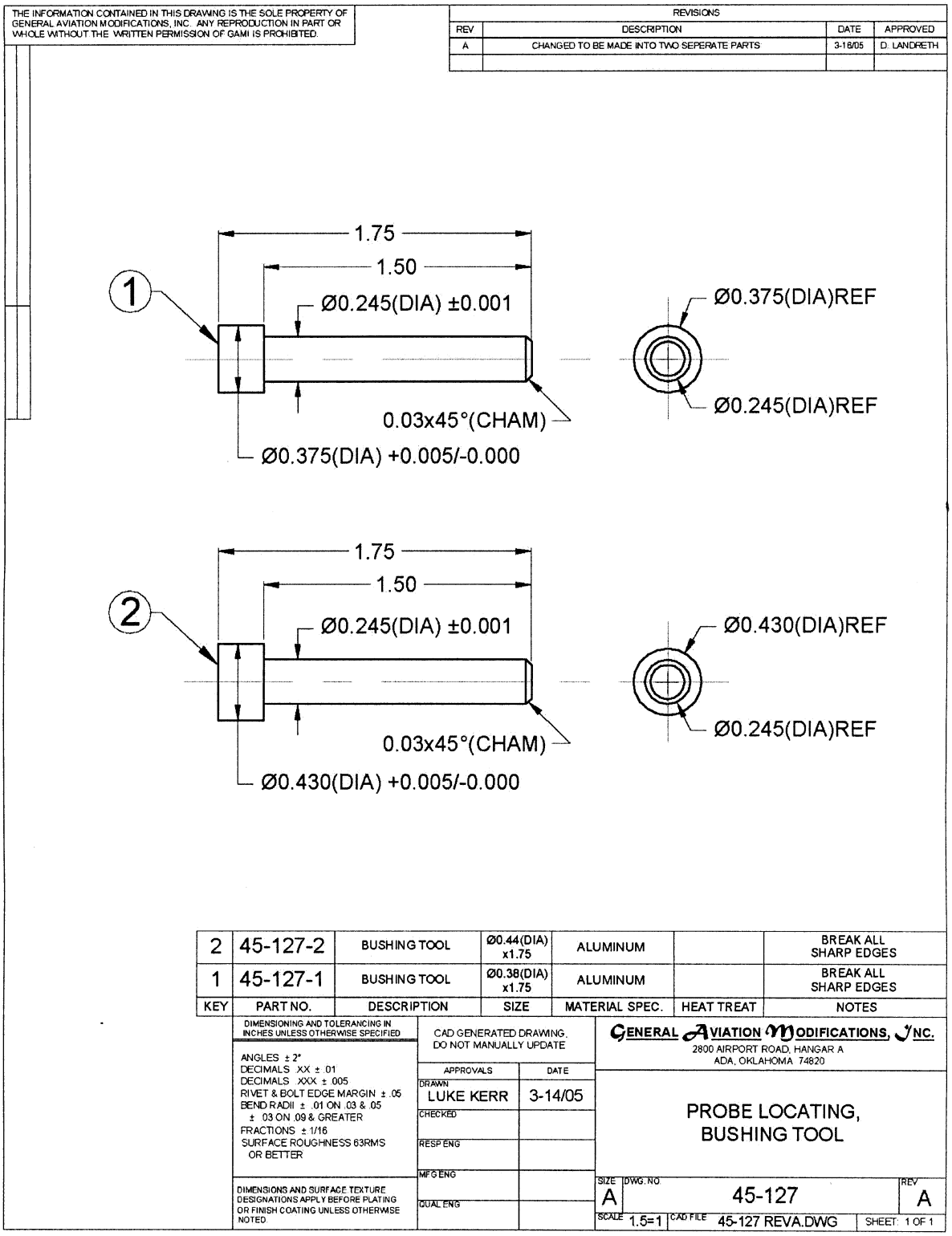
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF GENERAL AVIATION MODIFICATIONS, INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF GAMI IS PROHIBITED.
REVISIONS
REV | DESCRIPTION | DATE | APPROVED
A | CHANGED TO BE MADE INTO TWO SEPERATE PARTS | 3-18/05 | D. LANDRETH
1
1.75
1.50
Ø0.245(DIA) ±0.001
Ø0.375(DIA)REF
Ø0.245(DIA)REF
0.03x45°(CHAM)
Ø0.375(DIA) +0.005/-0.000
2
1.75
1.50
Ø0.245(DIA) ±0.001
Ø0.430(DIA)REF
Ø0.245(DIA)REF
0.03x45°(CHAM)
Ø0.430(DIA) +0.005/-0.000
2 | 45-127-2 | BUSHING TOOL | Ø0.44(DIA) x1.75 | ALUMINUM | | BREAK ALL SHARP EDGES
1 | 45-127-1 | BUSHING TOOL | Ø0.38(DIA) x1.75 | ALUMINUM | | BREAK ALL SHARP EDGES
KEY | PART NO. | DESCRIPTION | SIZE | MATERIAL SPEC. | HEAT TREAT | NOTES
DIMENSIONING AND TOLERANCING IN INCHES UNLESS OTHERWISE SPECIFIED
ANGLES ± 2°
DECIMALS .XX ± .01
DECIMALS .XXX ± .005
RIVET & BOLT EDGE MARGIN ± .05
BEND RADII ± .01 ON .03 & .05
± .03 ON .09 & GREATER
FRACTIONS ± 1/16
SURFACE ROUGHNESS 63RMS OR BETTER
DIMENSIONS AND SURFACE TEXTURE DESIGNATIONS APPLY BEFORE PLATING OR FINISH COATING UNLESS OTHERWISE NOTED
CAD GENERATED DRAWING. DO NOT MANUALLY UPDATE
APPROVALS | DATE
DRAWN LUKE KERR | 3-14/05
CHECKED
RESP ENG
MFG ENG
QUAL ENG
GENERAL AVIATION MODIFICATIONS, INC.
2800 AIRPORT ROAD, HANGAR A
ADA, OKLAHOMA 74820
PROBE LOCATING, BUSHING TOOL
SIZE A | DWG. NO 45-127 | REV A
SCALE 1.5=1 | CAD FILE 45-127 REVA.DWG | SHEET 1 OF 1

Figure 1

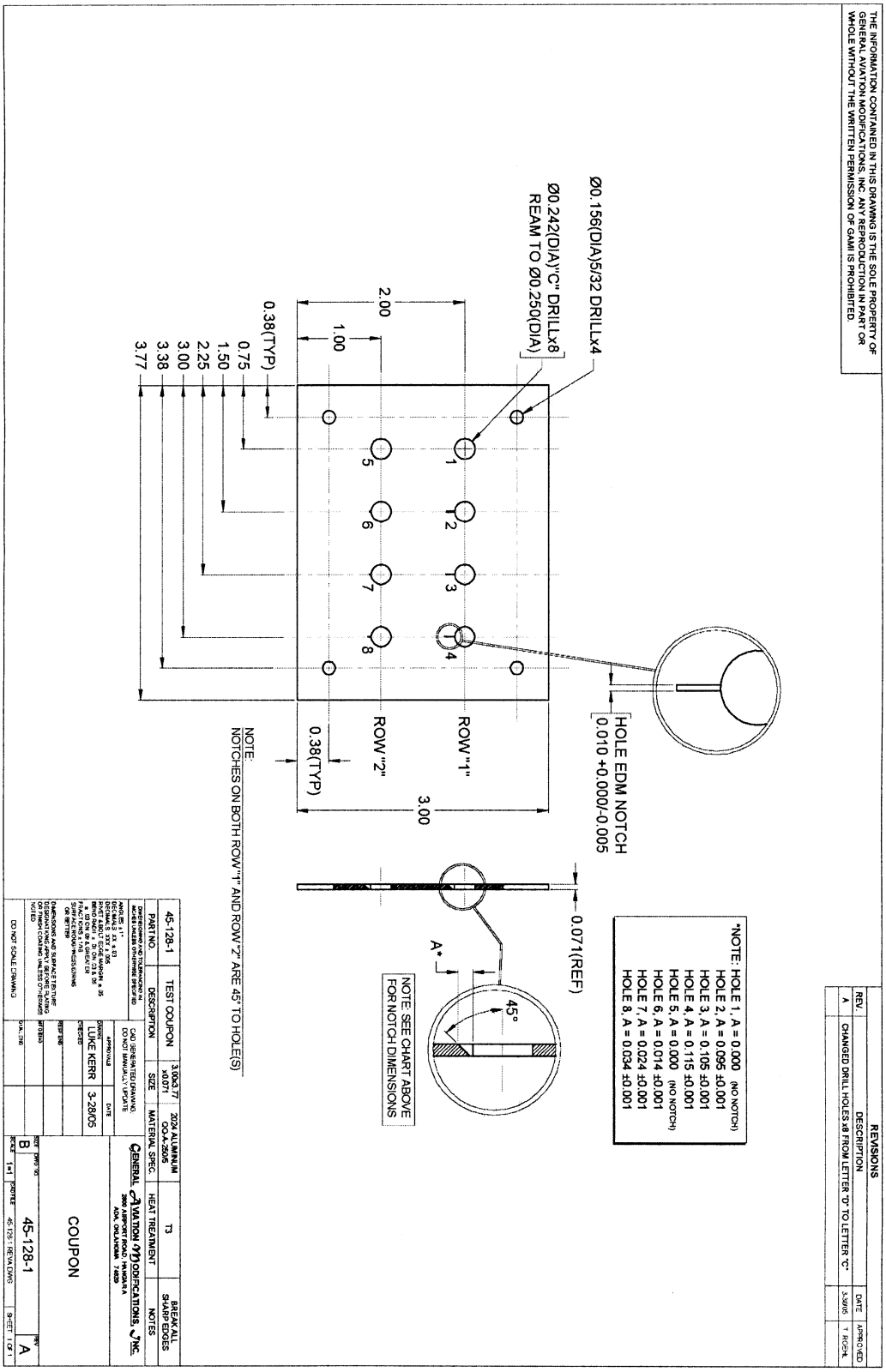
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF GENERAL AVIATION MODIFICATIONS, INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF GAMI IS PROHIBITED.
REVISIONS
REV
DESCRIPTION
DATE
APPROVED
A
CHANGED DRILL HOLES #8 FROM LETTER "D" TO LETTER "C"
3-30-05
T. ROCHA
Ø0.156(DIA)5/32 DRILLx4
Ø0.242(DIA)"C" DRILLx8
REAM TO Ø0.250(DIA)
2.00
1.00
0.38(TYP)
0.75
1.50
2.25
3.00
3.38
3.77
ROW "1"
ROW "2"
3.00
0.38(TYP)
HOLE EDM NOTCH
0.010 +0.000/-0.005
0.071(REF)
45°
A*
NOTE: SEE CHART ABOVE FOR NOTCH DIMENSIONS
*NOTE: HOLE 1, A = 0.000 (NO NOTCH)
HOLE 2, A = 0.095 ±0.001
HOLE 3, A = 0.105 ±0.001
HOLE 4, A = 0.115 ±0.001
HOLE 5, A = 0.000 (NO NOTCH)
HOLE 6, A = 0.014 ±0.001
HOLE 7, A = 0.024 ±0.001
HOLE 8, A = 0.034 ±0.001
NOTE:
NOTCHES ON BOTH ROW "1" AND ROW "2" ARE 45° TO HOLE(S)
45-128-1
TEST COUPON
3.00x3.77 x0.071
2024-ALUMINUM OQ-A-250/5
T3
BREAK ALL SHARP EDGES
PART NO.
DESCRIPTION
SIZE
MATERIAL SPEC.
HEAT TREATMENT
NOTES
CAD GENERATED DRAWING
DO NOT MANUALLY UPDATE
GENERAL AVIATION MODIFICATIONS, INC.
2800 AIRPORT ROAD, WINNIPEG R
AGA, OKLAHOMA 74830
APPROVAL
DATE
LUKE KERR
3-28-05
COUPON
45-128-1
B
A
DO NOT SCALE DRAWING
SCALE 1=1
SHEET 1 OF 1

Figure 2

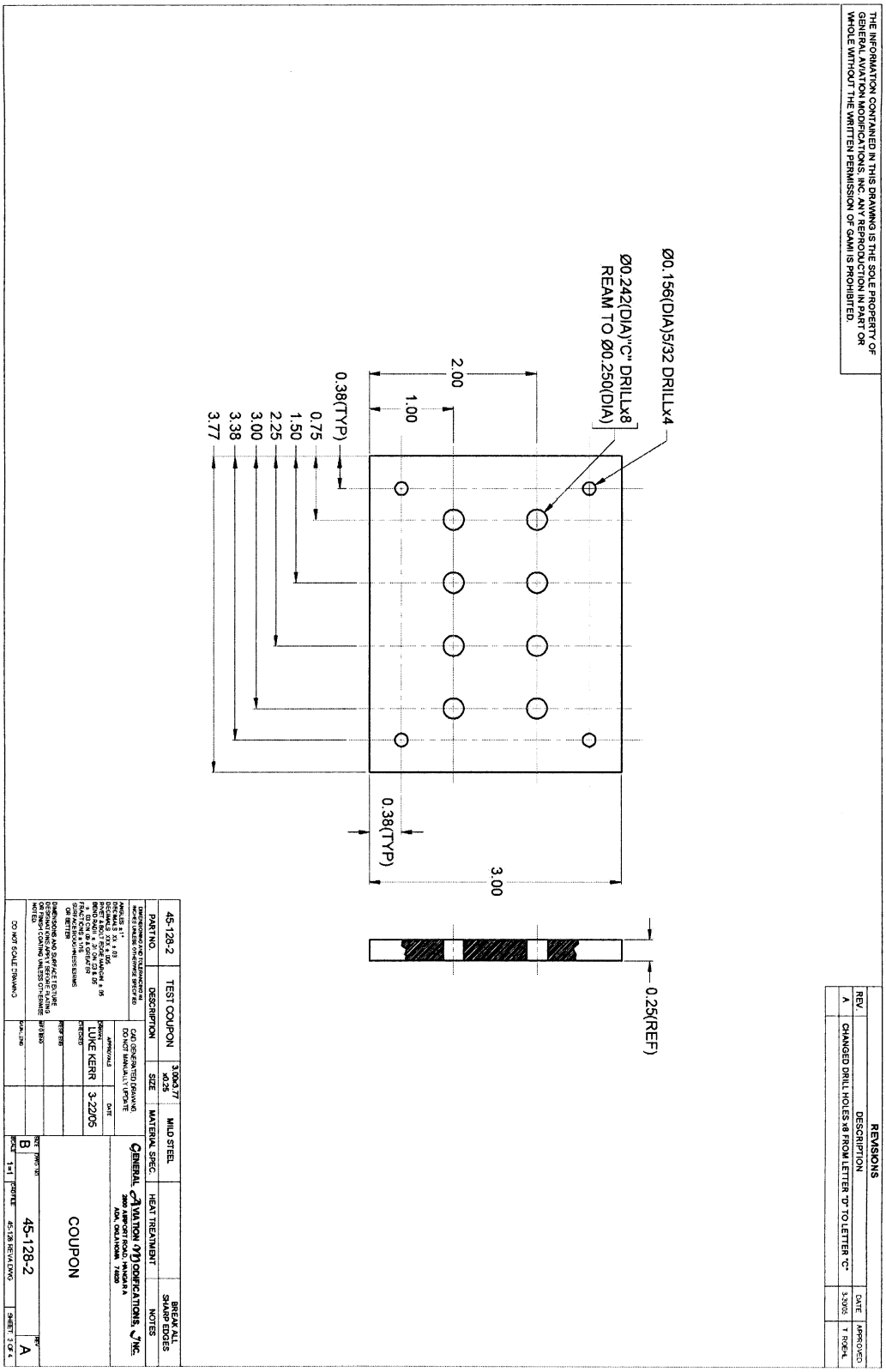
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF GENERAL AVIATION MODIFICATIONS, INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF GAMI IS PROHIBITED.
Ø0.156(DIA)5/32 DRILLx4
Ø0.242(DIA)"C" DRILLx8
REAM TO Ø0.250(DIA)
0.38(TYP)
0.75
1.50
2.25
3.00
3.38
3.77
2.00
1.00
0.38(TYP)
3.00
0.25(REF)
REVISIONS
REV
DESCRIPTION
DATE
APPROVED
A
CHANGED DRILL HOLES ø8 FROM LETTER "D" TO LETTER "C"
3-30-05
T. ROEHL
45-128-2
TEST COUPON
3.00x3.77
x0.25
MILD STEEL
PART NO.
DESCRIPTION
SIZE
MATERIAL SPEC.
HEAT TREATMENT
BREAK ALL SHARP EDGES
NOTES
CAD GENERATED DRAWING
DO NOT MANUALLY UPDATE
GENERAL AVIATION MODIFICATIONS, INC.
3800 NORTH ROGERS ROAD
AVA, OKLAHOMA 74003
APPROVALS
DATE
LUKE KERR
3-22/05
COUPON
45-128-2
A
B
1=1
45-128 REV A.DWG
SHEET 2 OF 4
DO NOT SCALE DRAWING

Figure 3

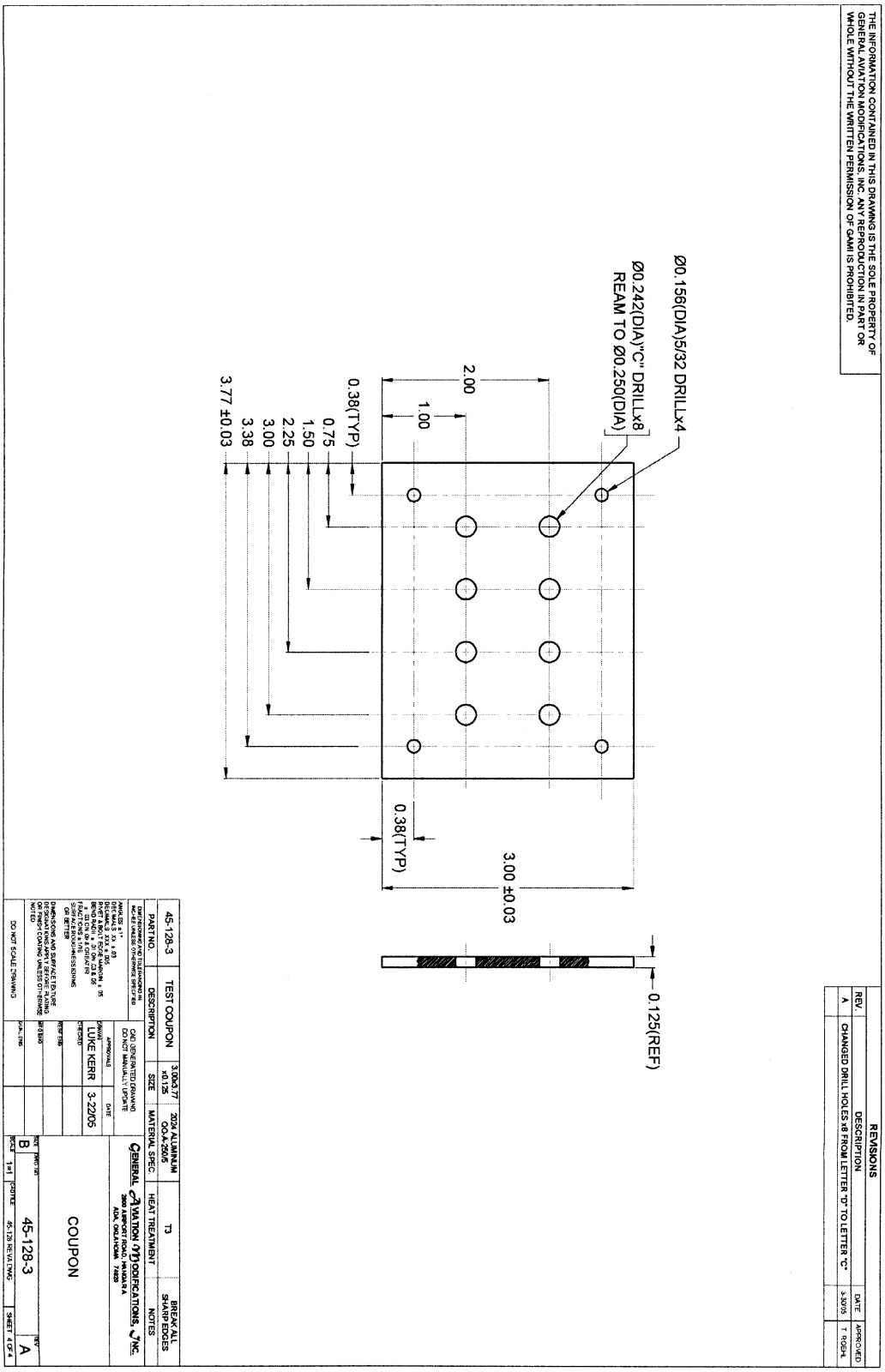
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF GENERAL AVIATION MODIFICATIONS, INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF GAMI IS PROHIBITED.
REVISIONS
REV
DESCRIPTION
DATE
APPROVED
A
CHANGED DRILL HOLES ø8 FROM LETTER "D" TO LETTER "C"
3-30/05
T. ROSEA
Ø0.156(DIA)5/32 DRILLx4
Ø0.242(DIA)"C" DRILLx8
REAM TO Ø0.250(DIA)
2.00
1.00
0.38(TYP)
0.75
1.50
2.25
3.00
3.38
3.77 ±0.03
0.38(TYP)
3.00 ±0.03
0.125(REF)
45-128-3
TEST COUPON
3.00x3.77 ±0.125
2024 ALUMINUM QQ-A-250/5
T3
BREAK ALL SHARP EDGES
PART NO.
DESCRIPTION
SIZE
MATERIAL SPEC.
HEAT TREATMENT
NOTES
CAD GENERATED DRAWING DO NOT MANUALLY UPDATE
GENERAL AVIATION MODIFICATIONS, INC.
2800 AIRPORT ROAD, NIAGARA FALLS, CANADA N8T 1R3
APPROVALS
DATE
DRAWN BY
LUKE KERR
3-22/05
COUPON
45-128-3
A
B
1 of 1
45-128 REV A.DWG
SHEET 4 OF 4
DO NOT SCALE DRAWING

Figure 4

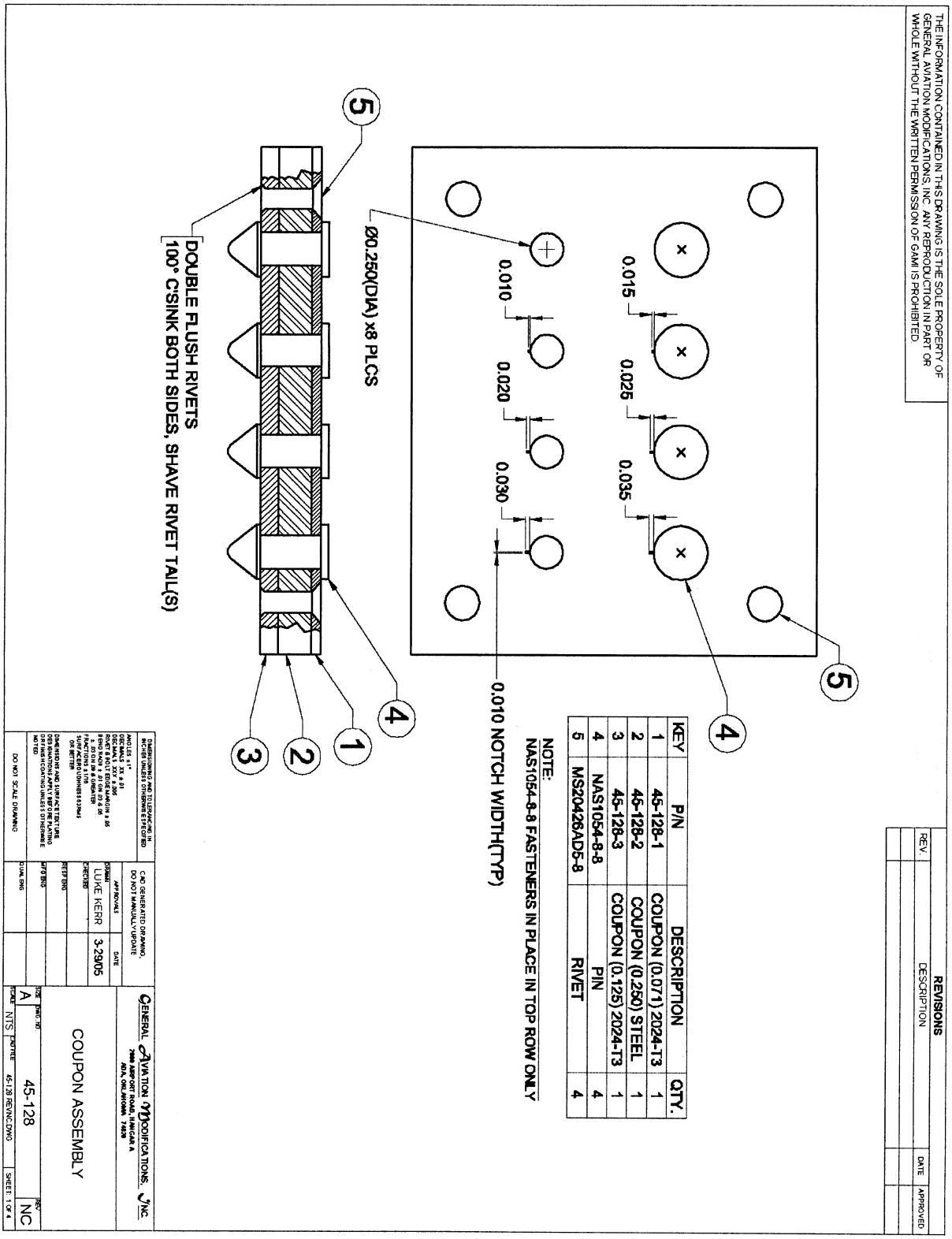
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF GENERAL AVIATION MODIFICATIONS, INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF GAMI IS PROHIBITED.
REVISIONS
REV
DESCRIPTION
DATE
APPROVED
0.015
0.025
0.035
0.010
0.020
0.030
Ø0.250(DIA) x8 PLCS
0.010 NOTCH WIDTH(TYP)
KEY | P/N | DESCRIPTION | QTY.
1 | 45-128-1 | COUPON (0.071) 2024-T3 | 1
2 | 45-128-2 | COUPON (0.250) STEEL | 1
3 | 45-128-3 | COUPON (0.125) 2024-T3 | 1
4 | NAS1054-8-8 | PIN | 4
5 | MS20426AD5-8 | RIVET | 4
NOTE:
NAS1054-8-8 FASTENERS IN PLACE IN TOP ROW ONLY
DOUBLE FLUSH RIVETS
100° C'SINK BOTH SIDES, SHAVE RIVET TAIL(S)
1
2
3
4
5
THIS DRAWING AND TECHNOLOGY RECEIVED UNLESS OTHERWISE STATED
UNITS: IN
DECIMALS .XX ± .01
DECIMALS .XXX ± .005
ANGLES ± 0°30' 0.00000 ± .05
FINISH RADII 1.01 OR 25 & UP
± .01 OR 25 & GREATER
FINISH HOLES
SURFACE ROUGHNESS 63 RMS
OR BETTER
DIMENSION AND SURFACE TEXTURE
DESIGNATION APPLY AFTER PLATING
DO NOT APPLY COATING UNLESS OTHERWISE NOTED
DO NOT SCALE DRAWING
CAD GENERATED DRAWING.
DO NOT MANUALLY UPDATE
APPROVALS
DRAWN
LUKE KERR
3-29/05
CHECKED
REF DWG
APP'D BY
DUAL DWG
GENERAL AVIATION MODIFICATIONS, INC
7000 AIRPORT ROAD, HANGAR A
ADA, OKLAHOMA 74820
COUPON ASSEMBLY
SIZE
A
DWG NO
45-128
REV
NC
SCALE
NTS
FORMAT
SHEET 1 OF 4

Figure 5

Issued in Kansas City, Missouri, on March 30, 2007.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 07–1715 Filed 4–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD; Amendment 39–15012; AD 2007–07–07]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Turbofan Engines

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. That AD requires a onetime inspection of certain fan disks for electrical arc-out indications, replacing fan disks with electrical arc-out indications, and reducing the life limit of certain fan disks. This AD requires the same reduced life limit of certain fan disks, but requires on-wing inspection of certain fan disks installed on regional jets within 500 flight hours after the effective date of this AD. This AD also requires more enhanced shop-level inspections of all fan disks for electrical arc-out defects. This AD results from a report that in January 2007, a CF34–3B1 turbofan engine experienced an uncontained fan disk failure during flight operation. We are issuing this AD to prevent an uncontained fan disk failure and airplane damage.

**DATES:** Effective April 23, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 23, 2007.

We must receive any comments on this AD by June 5, 2007.

**ADDRESSES:** Use one of the following addresses to comment on this AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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 General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422, for the service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On February 24, 2006, the FAA issued AD 2006–05–04, Amendment 39–14501 (71 FR 10832; March 3, 2006). That AD requires a onetime inspection, and if necessary replacement of certain fan disks for electrical arc-out defects. That AD also reduces the life limit of certain fan disks. That AD was the result of a fan disk crack found during a visual inspection as part of routine engine maintenance. That condition, if not corrected, could result in an uncontained failure of the engine.

### Actions Since AD 2006–05–04 was Issued

Since that AD was issued, a CF34–3B1 turbofan engine experienced an uncontained fan disk failure during flight operation, in January 2007. An inspection of the recovered segments of the fan disk found an electrical arc-out defect at the fracture origin site. The fan disk was marked using the electro-chemical etch marking (ECM) procedure during engine assembly. If the ECM procedure is performed incorrectly, an arc-out defect can occur. This arc-out defect, caused during part marking, resulted in the uncontained failure.

The uncontained fan disk failure during flight operation in January 2007 showed that the inspections in GE Service Bulletin No. CF34–BJ 72–A0088, Revision 1, dated October 30, 2000 and in GE Alert Service Bulletin (ASB) No. CF34–AL 72–A0103, dated August 4, 2000, mandated by AD 2006–05–04, are not adequate to find all electrical arc-out defects.

We issued emergency AD 2007–04–51 on February 16, 2007, and its follow-up published version, AD 2007–05–16, on February 28, 2007, to perform an enhanced onetime inspection of a high-risk suspect population of 31 fan disks. While complying with those ADs, operators found indications of additional electrical arc-out defects.

Because these additional indications of electrical arc-out defects validate our concern for the significant risk posed in the remaining suspect population of fan disks, we are issuing this final rule; request for comments AD. This AD requires an accelerated inspection schedule using the improved inspections of the three GE ASBs listed below. These ASBs include fluorescent penetrant inspection (FPI), tactile and enhanced visual (TEV) inspection, and eddy current inspection (ECI) for finding electrical arc-out defects. This condition, if not corrected, could result in an uncontained fan disk failure and airplane damage.

### Relevant Service Information

We have reviewed and approved the technical contents of GE ASBs No. CF34–BJ S/B 72–A0212, Revision 2, dated March 22, 2007, ASB No. CF34–AL S/B 72–A0233, Revision 2, dated March 22, 2007, and ASB No. CF34–AL S/B 72–A0231, dated March 7, 2007. All three ASBs list the affected fan disks by serial number and part number. The first two ASBs describe procedures for performing FPI, a tactile and TEV inspection, and ECI for cracks and electrical arc-out defects. The third ASB describes procedures for performing an on-wing TEV inspection of fan disks for electrical arc-out defects.

### FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines of the same type design. We are issuing this AD to prevent an uncontained fan disk failure and airplane damage. This AD requires on-wing TEV inspection of fan disks for electrical arc-out defects on fan disks installed on regional jets within 500 flight hours after the effective date of this AD. This AD also requires for all affected fan disks shop-level FPI, enhanced TEV, and ECI inspections for cracks and electrical arc-out defects. This AD also carries forward from AD 2006–05–04 the reduced life limit for certain fan disks. You must use the service information described previously to perform the actions required by this AD.

**FAA's Determination of the Effective Date**

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS 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 AD Docket**

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

**Docket Number Change**

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2007–27687. The old Docket No. became the Directorate Identifier, which is 2000–NE–42–AD. This AD might get logged into the DMS docket, ahead of the previously collected documents from the old docket file, as we are in the process of sending those items to the DMS.

**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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39–14501 (71 FR 10832; March 3, 2006), and by adding a new airworthiness directive, Amendment 39–15012, to read as follows:

**2007–07–07 General Electric Company:** Amendment 39–15012. Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective April 23, 2007.

**Affected ADs**

(b) This AD supersedes AD 2006–05–04.

**Applicability**

(c) This AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines, with fan disks part numbers (P/Ns) 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06 installed. These engines are installed on, but not limited to, Bombardier Canadair airplane models CL–600–2A12, –2B16, and –2B19.

**Unsafe Condition**

(d) This AD results from a report that in January 2007, a CF34–3B1 turbofan engine experienced an uncontained fan disk failure during flight operation. We are issuing this AD to prevent an uncontained fan disk failure and airplane damage.

**Compliance**

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

**Removal of Certain Fan Disks From Service**

(f) For fan disks listed by P/N and SN in the following Table A that have fewer than 8,000 cycles-since-new (CSN) on the effective date of this AD, replace fan disks before accumulating 8,000 CSN:

TABLE A.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS

| Disk part No. | Disk serial No. |
|---|---|
| 6078T57G02 | GAT6306N |
| 6078T00G01 | GAT3860G |
| 6078T57G02 | GAT1924L |
| 5922T01G04 | GAT9599G |
| 6078T57G04 | GEE05831 |
| 6078T57G04 | GEE06612 |
| 6078T57G04 | GEE06618 |
| 6078T57G04 | GEE06974 |
| 6078T57G04 | GEE06980 |
| 6078T57G05 | GEE143FY |
| 6078T57G05 | GEE1453G |
| 6078T57G05 | GEE14452 |

TABLE A.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS—Continued

| Disk part No. | Disk serial No. |
|---|---|
| 6078T57G05 | GEE145NA |
| 6078T57G04 | GEE08086 |
| 6078T57G04 | GEE09287 |
| 6078T57G04 | GEE09337 |
| 6078T57G05 | GEE12720 |
| 6078T57G05 | GEE14214 |
| 6078T57G05 | GEE142YT |
| 6078T57G05 | GEE146GT |

(g) For fan disks listed in Table A of this AD that have 8,000 CSN or more on the effective date of this AD, replace the disk within 15 days after the effective date of this AD.

**Inspections of Fan Disks Installed in Regional Jet Airplanes**

(h) For CF34–3A1 and CF34–3B1 turbofan engines installed on Bombardier Canadair CL600–2B19 Regional Jet airplanes:

**On-Wing Tactile and Enhanced Visual (TEV) Inspection**

(1) On-wing TEV inspect the fan disks listed by P/N and SN in Table 1 of GE Alert Service Bulletin (ASB) No. CF34–AL S/B 72–A0231, dated March 7, 2007, using the compliance times specified in the following Table B:

TABLE B.—REGIONAL JET ON-WING FAN DISK INSPECTION COMPLIANCE TIMES

| For fan disks: | Inspect: |
|---|---|
| (i) That have not had a shop-level inspection | Within 500 flight hours after the effective date of this AD. |
| (ii) That are marked with an asterisk in Table 1 of GE ASB No. CF34–AL S/B 72–A0231, dated March 7, 2007. | Within 500 flight hours after the effective date of this AD. |

(2) Use paragraphs 3.A. through 3.A.(13) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0231, dated March 7, 2007, to do the inspection.

**Shop-level Inspection**

(3) Within 5,000 flight hours or 5 calendar years after the effective date of this AD, whichever occurs first, fluorescent penetrant inspect (FPI), TEV inspect, and eddy current inspect (ECI) at shop-level for cracks and electrical arc-out defects on the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–AL S/B 72–A0233, Revision 2, dated March 22, 2007.

(4) Use paragraphs 3.A.(1) through 3.A.(6) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0233, Revision 2, dated March 22, 2007, to do the inspections.

**Shop-level Inspection Exemption**

(5) Fan disks are exempt from the shop-level inspection that meet the following criteria:

(i) Fan disks inspected before the effective date of this AD per GE Engine Manual No. SEI–756, Section 72–21–00 (FAN ROTOR ASSEMBLY INSPECTION); and

(ii) That have accumulated no more than 100 cycles since that inspection; and

(iii) That pass the on-wing TEV inspection in paragraph (h)(2) of this AD.

**Inspection of Fan Disks Installed in Business Jet Airplanes**

(i) For CF34–1A, –3A, –3A1, –3A2, and –3B turbofan engines installed on Bombardier Canadair Models CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A), (CL–601–3R), and (CL–604) Business Jet airplanes:

(1) FPI, TEV inspect, and ECI for cracks and electrical arc-out defects at shop-level on the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–BJ S/B 72–A0212, Revision 2, dated March 22, 2007, using the compliance times specified in the following Table C:

TABLE C.—BUSINESS JET SHOP-LEVEL FAN DISK INSPECTION COMPLIANCE TIMES

| For fan disks: | Inspect: |
|---|---|
| (i) That have more than 5,500 flight hours on the effective date of this AD. | Within 500 flight hours after the effective date of this AD. |
| (ii) That have 5,500 or fewer flight hours on the effective date of this AD. | Within accumulating a total of 6,000 fan disk operating hours-since-new, or 5 calendar years, whichever occurs first. |

(2) Use paragraphs 3.A. through 3.A.(10) of the Accomplishment Instructions of GE ASB No. CF34–BJ S/B 72–A0212, Revision 2, dated March 22, 2007, to do the inspections.

**Reporting Requirements**

(j) Report the results of the on-wing inspections performed in paragraph (h)(2) by following the instructions in paragraph 3.A.(14) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0231, dated March 7, 2007. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and has assigned OMB Control Number 2120–0056.

**Previous Credit**

(k) Credit is allowed for fan disks previously shop-level inspected using GE ASB No. CF34–AL S/B 72–A0233, dated March 7, 2007 or Revision 1 of that ASB dated March 16, 2007, or GE ASB No. CF34–BJ S/B 72–A0212, dated March 7, 2007 or Revision 1 of that ASB dated March 16, 2007, before the effective date of this AD.

**Alternative Methods of Compliance**

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

**Related Information**

(m) Emergency AD 2007–04–51 and AD 2007–05–16 also pertain to the subject of this AD.

**Material Incorporated by Reference**

(n) You must use the General Electric Alert Service Bulletins listed in Table D of this AD to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table D of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422. You can

review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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.*

TABLE D.—INCORPORATION BY REFERENCE

| Alert Service Bulletin No. | Page No. | Revision | Date |
|---|---|---|---|
| CF34–AL S/B 72–A0231 Total Pages: 94 | All | Original | March 7, 2007. |
| CF34–AL S/B 72–A0233 Total Pages: 91 | All | 2 | March 22, 2007 |
| CF34–BJ S/B 72–A0212 Total Pages: 95 | All | 2 | March 22, 2007 |

Issued in Burlington, Massachusetts, on March 30, 2007.

**Peter A. White,**

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

[FR Doc. E7–6345 Filed 4–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 401, 404, 405, 406, 413, 415, 420, 431, and 437

**[Docket No.: FAA–2006–24197; Amendment Nos. 401–5, 404–4, 405–3, 406–4, 413–9, 420–3, 431–2, 437–0]**

**RIN 2120–AI56**

## Experimental Permits for Reusable Suborbital Rockets

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Aviation Administration (FAA) is amending its commercial space transportation regulations under the Commercial Space Launch Amendments Act of 2004. The FAA is establishing application requirements for an operator of a manned or unmanned reusable suborbital rocket to obtain an experimental permit. The FAA is also establishing operating requirements and restrictions on launch and reentry of reusable suborbital rockets operated under a permit.

**DATES:** These amendments become effective June 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Randy Repcheck, Office of Commercial Space Transportation, Systems Engineering and Training Division, AST–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8760; facsimile (202) 267–5463, e-mail *randy.repcheck@faa.gov.* For legal information, contact Laura Montgomery, Senior Attorney, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971, e-mail *laura.montgomery@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

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.*

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

### Authority for This Rulemaking

The FAA's authority to issue rules regarding space transportation safety is found under the general rulemaking authority, 49 U.S.C. 322(a), of the Secretary of Transportation to carry out 49 U.S.C. Subtitle IX, chapter 701, 49 U.S.C. 70101–70121 (Chapter 701). Also, the recently enacted Commercial Space Launch Amendments Act of 2004 (the CSLAA) mandates this rulemaking through section 70105a, which creates the FAA's new permit authority, and section 70120, which requires that this rulemaking be complete by June 23, 2006. If the FAA does not issue a final rule by December 23, 2007, Congress prohibits the FAA from issuing any permits for launch or reentry until the final regulations are issued.

### I. Background

Chapter 701 authorizes the Secretary of Transportation and, through delegations, the FAA's Associate Administrator for Commercial Space Transportation, to oversee, authorize, and regulate both launches and reentries of launch and reentry vehicles, and the operation of launch and reentry sites when carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105, 70105a; U.S. Federal Aviation Administration, Commercial Space Transportation Delegations of Authority, N1100.240 (Nov. 21, 1995). Chapter 701 directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States, and to encourage, facilitate, and promote commercial space launch and reentry by the private sector. 49 U.S.C. 70103, 70105, 70105a.

On December 23, 2004, President Bush signed into law the Commercial

Space Launch Amendments Act of 2004 (CSLAA). The CSLAA changes current law in several significant ways. One such change, which establishes an experimental permit regime for manned and unmanned developmental reusable suborbital rockets, is the subject of this rulemaking. The FAA is implementing other terms of the CSLAA in a companion rule, ''Human Space Flight Requirements for Crew and Space Flight Participants'' 71 FR 75616 (Dec. 15, 2006).

A permit provides an alternative to licensing for operators of reusable suborbital rockets. The CSLAA defines a suborbital rocket as a vehicle, rocket-propelled in whole or in part, intended for flight on a suborbital trajectory, and the thrust of which is greater than its lift for the majority of the rocket-powered portion of ascent. 49 U.S.C. 70102. To be eligible for an experimental permit, a reusable suborbital rocket may only be flown for the following purposes:

- Research and development to test new design concepts, new equipment, or new operating techniques,
- Showing compliance with requirements to obtain a license under Chapter 701, or
- Crew training before obtaining a license for the same design. 49 U.S.C. 70105a(d).

The reusable suborbital rocket must also be flown on a suborbital trajectory, which the CSLAA defines as the intentional flight path of a launch vehicle, reentry vehicle, or any portion thereof, whose vacuum instantaneous impact point (the location on Earth where a vehicle would impact if it were to fail, calculated in the absence of atmospheric drag effects) does not leave the surface of the Earth. 49 U.S.C. 70102.

On March 31, 2006, the FAA published a notice of proposed rulemaking (NPRM) containing proposed requirements for operators of experimental reusable suborbital rockets. Experimental Permits for Reusable Suborbital Rockets, 71 FR 16251 (Mar. 31, 2006). In the notice, the FAA proposed part 437, which contains requirements for obtaining and operating under an experimental permit. The FAA also proposed changes to existing regulations to reflect the agency's new authority to issue permits.

## II. Description of Final Rule and Discussion of Comments

The FAA received comments from 12 entities, including aerospace companies, associations, individuals, service providers, and other agencies of the U.S. Government. Aerospace companies who provided comments include Blue Origin, LLC (Blue Origin), Masten Space Systems (Masten), the Personal Spaceflight Federation [1] (Federation), Rocketplane Limited, Inc. (Rocketplane), and XCOR Aerospace (XCOR). The following associations, individuals, and service providers also commented: Beyond Earth Enterprises (Beyond Earth), Paul T. Breed, Air Line Pilots Association International (ALPA), the National Association of Rocketry, Spaceport Associates, SpaceShot, Inc. (SpaceShot). The FAA also received consolidated comments from Tripoli Rocketry Association, Experimental Rocketry of the Pacific, Stratofox Aerospace Tracking Team, and a number of individuals from those organizations (Tripoli).

In general, the commenters supported the proposed requirements, but with several suggested changes to what the FAA proposed in its NPRM. Permit requirements and the comments addressing them are discussed in section A below.[2] Changes to other regulations as proposed in the NPRM are discussed in section B.

### *A. Part 437—Experimental Permits*

#### 1. Eligibility for an Experimental Permit

Section 437.5 contains the eligibility requirements for an experimental permit. As proposed in the NPRM, the FAA will issue a permit for the launch or reentry of a reusable suborbital rocket only for research and development, demonstrating compliance with FAA license requirements or crew training.

##### a. Reentry

A suborbital rocket may engage in reentry.[3] For most suborbital launches, whether the flight entails a reentry will not matter from a regulatory perspective. The FAA will authorize the flight under a single license or permit, implementing safety requirements suitable to the safety issues involved. Recognizing suborbital reentry matters for two reasons. First, if a suborbital rocket is flown from a foreign country by a foreign entity into the United States, that entity may require a reentry license or permit from the FAA, depending on whether the planned trajectory of the rocket includes flight in outer space. Second, a permanent site that supports the landing of suborbital rockets may now be considered a reentry site depending, once again, on whether the planned trajectory reaches outer space.

Blue Origin notes that use of ''reentry'' to describe descent of a suborbital vehicle entails a change in FAA's regulatory terminology. The FAA previously took the position that suborbital rockets do not ''reenter'' and are not ''reentry vehicles.'' This change is made necessary by the CSLAA. As acknowledged by Blue Origin, the CSLAA describes suborbital rockets as reentering. *See* 49 U.S.C. 70105(b)(4). Congress made clear that a suborbital rocket can ''reenter'' for purposes of licensing or permitting.

Blue Origin stated that treating a suborbital mission in part as a ''reentry'' creates definitional inconsistency under Chapter 701. In particular, it points to the definition of ''reenter'' and ''launch.'' Reenter means ''to return or attempt to return, purposefully, a reentry vehicle and its payload, crew, or space flight participants, if any, from Earth orbit or from outer space to Earth.'' 49 U.S.C. 70102(13). Blue Origin stated that a suborbital reusable launch vehicle (RLV) is neither in ''orbit'' nor in ''outer space.''

It is not necessary to reach orbit to be in outer space. Outer space has yet to be defined, but is commonly understood to mean something more than orbit. Although a suborbital rocket does not reach the velocity necessary to orbit the Earth, the vehicle can reach altitudes sufficient to be considered outer space. With respect to the term ''launch,'' the FAA proposed in the NPRM that for a suborbital RLV, ''flight ends after vehicle landing or impact on Earth, and after activities necessary to return the reusable suborbital rocket to a safe condition on the ground end.'' Blue Origin pointed out that this definition fails to account for ''reentry.'' The FAA agrees, and now defines launch to end ''after reaching apogee if the flight includes a reentry, or otherwise after vehicle landing or impact on Earth and after activities necessary to return the reusable suborbital rocket to a safe

[1] The Federation is a non-profit trade association consisting of companies whose business involves or will involve commercial human space flight. The Federation provided consensus comments on the NPRM and consists of the following entities: Air Launch, Armadillo Aerospace, Bigelow Aerospace, Mojave Spaceport, RocketPlane Limited, Inc., Scaled Composites, Space Adventures, SpaceDev, Space Explorations Technologies Corporation (SpaceX), The SpaceShip Company, XCOR Aerospace, the X PRIZE Foundation, and Virgin Galactic.

[2] The FAA is adopting the following sections without modification from what it proposed in the NPRM: §§ 437.1, 437.9, 437.13, 437.15, 437.17, 437.27, 437.29, 437.31, 437.35, 437.37, 437.39, 437.41, 437.59, 437.75, 437.81, 437.83, 437.87, and 437.93. Sections 437.27, 437.29, 437.31, 437.33, 437.35, 437.37, 437.39, and 437.41 require that an applicant demonstrate satisfaction of subpart C safety requirements by providing the FAA with operational safety documentation. These requirements remain the same as proposed in the NPRM, except for § 437.33, which was modified to be consistent with § 437.61.

[3] Historically, the FAA has treated the whole of a suborbital operation as a launch because it did not obtain reentry authority until 1998.

condition on the ground.'' This definition thus accounts for the two types of suborbital rockets: those that reenter and those that do not. Because Congress defines reentry as, in relevant part, the return of a reentry vehicle ''from Earth orbit or from outer space to Earth,'' a suborbital rocket that reaches outer space reenters as part of its mission. Suborbital rockets that do not reach outer space are treated as just launching and landing.

Lastly, Blue Origin stated that this change has other regulatory implications, particularly for financial responsibility. These implications have been covered in a companion rulemaking on human space flight and financial responsibility 71 FR 75616 (Dec. 15, 2006).

b. Amateur Rocketry

Tripoli Rocketry Association requested that any amateur rocketry project of its members that exceeded the thresholds for amateur rocket activity be covered under the experimental permit regime. To that end, Tripoli suggested that the FAA include ''non-profit rocketry research, education, recreation, and sporting competition projects'' as eligible for a permit under § 437.5. Paul T. Breed would like the experimental permit rules to apply to non-reusable expendable flights, including launches of sounding rockets. The FAA is bound by the restrictions of Congress, which plainly defined the eligibility requirements by statute. Whether any particular rocketry project can be covered under an experimental permit regime depends on whether the rocket in question is a reusable suborbital rocket, and whether the purpose of the flight program meets the requirements of § 437.5. The FAA thus cannot accommodate Tripoli's request to make recreation and sporting competition projects eligible for permits. Similarly, Congress determined that expendable launch vehicles, including sounding rockets, are not eligible for a permit.

c. Foreign Entities

Spaceport Associates recommended that the FAA re-examine the applicability of FAA space transportation regulations to U.S. citizens or U.S. entities outside the United States. It believes that the requirement for FAA authorization might prevent foreign operators from using American spacecraft or personnel in creating their own domestic space tourism operations. This, in turn, would reduce the market opportunity for U.S. manufacturers of suborbital spacecraft. This requirement is governed by statute. Under 49 U.S.C. 70104(a), a U.S. citizen must obtain a license or permit to launch, regardless of whether he does so outside the United States or not.

d. Single License or Permit

For operators of vehicles that have characteristics common to both rockets and aircraft, the CSLAA's definitions of suborbital rocket and suborbital trajectory establish the circumstances under which the operator will be required to conduct vehicle flights under an experimental permit or launch license, rather than through a special airworthiness certificate in the experimental category (referred to as experimental airworthiness certificates for the remainder of this discussion). The FAA noted in the NPRM that for some vehicles an operator could conduct early test flights, including glide tests or flights under jet power only, under a special airworthiness certificate, before transitioning to an experimental permit. 71 FR 16252. The Federation requested that the FAA further emphasize that reusable suborbital rocket operators and developers will not be required to obtain an experimental airworthiness certificate to obtain a permit or license.

The Federation is correct that reusable suborbital rocket operators and developers will not be required to obtain an experimental airworthiness certificate to obtain a permit or license. However, an operator cannot fly under a permit or license unless its vehicle is a reusable suborbital rocket or otherwise subject to Chapter 701. A suborbital rocket is a vehicle, rocket-propelled in whole or in part, intended for flight on a suborbital trajectory, and the thrust of which is greater than its lift for the majority of the rocket-powered portion of ascent. 49 U.S.C. 70102(19). If an operator plans to fly its vehicle as a suborbital rocket, the operator must fly it in accordance with the requirements of an experimental permit or license.

The Federation also asked that the FAA clarify that it will not require someone to obtain a permit to obtain a license. A permit is not a prerequisite for a license. Nonetheless, data obtained while operating under a permit may be useful in applying for a license.

2. Scope of an Experimental Permit

Section 437.7 states that an experimental permit authorizes launch and reentry of a reusable suborbital rocket, as proposed in the NPRM. The authorization includes pre- and post-flight ground operations. A permit could be issued for a launch, a reentry, or both a launch and a reentry.

Paul T. Breed asked that the FAA distinguish between manned vehicles and unmanned vehicles. The requirements do make these distinctions. Part 437 of 14 CFR applies whether a vehicle is manned or unmanned. If a person is on board a permitted vehicle, 14 CFR part 461 contains added requirements.

3. Duration of an Experimental Permit

As proposed in the NPRM, § 437.11 provides that an experimental permit will last one year from the date of issuance. Spaceport Associates and Blue Origin questioned whether one year was long enough to complete a flight test program, and proposed a duration of 18 months or longer.

As the FAA has learned in its licensing program, combining a specific end date for an authorization with the ability to renew allows the FAA and a vehicle operator to re-examine the assumptions that went into and the requirements arising out of the earlier determination. The FAA chose a one-year permit because of the dynamic nature of a flight test program. A flight test program will likely result in design and operational changes. The FAA also based the term on experimental airworthiness certificates used for aircraft, consistent with Congress's desire for the FAA to model experimental permits after experimental airworthiness certificates. An experimental airworthiness certificate for research and development and showing compliance with regulations is effective for one year or less after the date of issuance. 14 CFR 21.181(a)(4).

The duration of an experimental permit does not need to be longer, because a permittee may obtain a renewal. If the permittee has been operating in compliance with the regulations and terms and conditions of its permit, it should not be difficult to obtain a renewal. To avoid any disruption to the schedule, a permittee should apply for renewal at least 60 days before its permit expires, in accordance with 14 CFR 413.23.

4. General Application Requirements for Obtaining an Experimental Permit

Section 437.21 requires an applicant to make demonstrations and provide information in order to obtain a permit. These requirements include demonstrating compliance with part 437; providing enough information for the FAA to analyze the environmental impacts associated with a proposed launch or reentry; providing information for the FAA to conduct a maximum probable loss analysis under part 440; complying with human space flight requirements under part 460; and making each reusable suborbital rocket

to be flown available to the FAA for inspection. Section 437.21 also states that if an applicant proposes to use any launch vehicle, reentry vehicle, safety system, process, service, or personnel for which the FAA has issued a safety approval under part 414 of this subchapter, the FAA will not reevaluate that safety element to the extent its use is within its approved envelope.[4]

a. Private Use Launch Site

In 2000, the FAA announced that a launch licensee who operated a private site for its own launches did not need a license to operate a launch site. The FAA announced in the NPRM that it had to revisit this issue for both licenses and permits. The FAA proposed that a reusable suborbital rocket operator operating a private launch site that contains permanent facilities or supports continuous operations would have to obtain a launch site operator license in accordance with part 420.

Several commenters objected to the FAA's proposed change in policy. According to Blue Origin, the Federation, and XCOR, the FAA should impose requirements related to the operation of a launch site through a launch license or permit. They objected not to the safety issues themselves but to having to satisfy part 420 in its entirety.

The FAA has decided against adopting the proposed change in this rulemaking. Today's rule addresses launches conducted under a permit rather than a license, and the agency believes the rulemaking should be limited to those differences. Because the proposed change in policy would apply to all private launch sites, the FAA has determined that any change in policy is more appropriately addressed by a separate rulemaking. The FAA will consider the comments submitted to the NPRM in evaluating whether a change to part 420 is merited.

b. Use of Safety Approval

Section 437.21(c) states that the FAA will not evaluate those portions of an application from an applicant who proposes to use any reusable suborbital rocket, safety system, process, service, or personnel for which the FAA has issued a safety approval under part 414. Although the FAA did not obtain any comment regarding safety approvals, the FAA is adopting this provision as part of 437.21 to clarify that an applicant for a permit may rely on a safety approval obtained under part 414.

c. Inspection

As proposed in the NPRM, under § 437.21(c), an applicant must make its reusable suborbital rocket available to the FAA for inspection before the FAA issues an experimental permit. XCOR agreed with the requirement because it believes someone should ''come out and kick the tires and make sure the vehicle isn't a piece of junk.'' Blue Origin recommended that the FAA conduct this inspection before flight rather than before issuing a permit to promote regulatory certainty and predictability, and because the focus of a permit is on the safety of launch and reentry as opposed to certification of the vehicle design. Such an approach, according to Blue Origin, would allow vehicle operators to obtain regulatory approval for a vehicle prior to paying the expense of building the vehicle. The FAA has decided against Blue Origin's approach, because a determination on the safety of the vehicle is difficult to make before the safety systems have been built and verified. Also, the FAA will inspect the vehicle to ensure compliance with application representations.

5. Program Description

Section 437.23 requires an applicant to provide a program description. Under § 437.23(b)(1), a permit applicant must describe all reusable suborbital rocket systems, including any structural, flight control, thermal, pneumatic, hydraulic, propulsion, electrical, environmental control, software and computing systems, avionics, and guidance systems used in the reusable suborbital rocket. In response to a comment from the Federation, this requirement marks a slight change from what the FAA proposed in the NPRM. The requirement recognizes, by the inclusion of ''any'' before the different kinds of systems, that not all vehicles will have all systems.

The Federation recommended that FAA describe the intent of the program description, and clarify the expected level of detail required. As suggested by the Federation, the FAA agrees that the description required for any system is a general overview or basic description of the system. However, when showing compliance with the containment requirements of § 437.31, an applicant will need to provide a more detailed description of any system that has been identified in its hazard analysis as safety critical.

Requiring a description of ''software and computing systems,'' rather than just software systems as proposed in the NPRM, clarifies that computer system hardware, which includes physical devices that assist in the transfer of data and perform logic operations, are included in the description of vehicle systems. Computing systems may include such hardware as central processing units (CPU), busses, display screens, memory cards, or peripherals, and may include stand-alone systems, such as off-the-shelf digital controllers.

6. Flight Test Plan

Section 437.25 requires an applicant to provide a flight test plan. Under § 437.25(a), an applicant must describe any flight test program, including the estimated number of flights and key flight-safety events. For each operating area, an applicant must also provide the maximum altitude it expects the reusable suborbital rocket to reach. This represents a clarification of what the FAA originally proposed. In the NPRM, the FAA proposed to require an applicant to describe the maximum altitude without reference to the operating area.

7. Rest Requirements

As proposed in the NPRM, § 437.51 requires that a permittee comply with crew rest rules. The rules require that vehicle safety operations personnel not work more than 12 consecutive hours, more than a total of 60 hours in the 7 days preceding a permitted activity, or more than 14 consecutive work days.[5] ALPA agreed that prescriptive duty limits are suitable and necessary to mitigate the likelihood of human error related to fatigue. ALPA did not agree, however, that the rules adequately or accurately incorporate principles established by current scientific research and literature.

ALPA cited a June 1987 Report of the Presidential Commission on the Space Shuttle Challenger Accident (The Rogers Report). The Rogers Report noted that a number of authoritative scientific studies have shown: (1) That multiple strings of 11 to 12-hour workdays produce worker fatigue, negatively impact worker effectiveness, and present a threat to public safety; 2) that night work and shift changes produce sleep loss and fatigue by disrupting workers' circadian rhythms; and (3) that shift workers often require a week or

[4] The FAA can issue a safety approval for (1) a launch vehicle, reentry vehicle, safety system, process, service, or any identified component thereof; or (2) qualified and trained personnel, performing a process or function related to licensed launch activities or vehicles. A safety approval is an FAA determination that the defined safety element, when used or employed within a defined envelope, parameter, or situation, will not jeopardize public health and safety of property. 14 CFR 414.3.

[5] In the NPRM, the FAA, as XCOR pointed out, mistakenly said ''and'' rather than ''or.''

more to adapt to new shifts, especially if one of the shifts is a night shift.

ALPA stated that the rules fail to mitigate against these known risks.

First, the proposed rule would allow a string of workdays for vehicle safety operations personnel, with shifts each up to 11 hours and 59 minutes, without any required rest period at all. Second, requiring a ''rest'' period of 8 hours after a 12-hour shift simply fails to provide an adequate period for sleep, increasing the likelihood of both acute and accumulated or chronic, fatigue. Further, the combination of 12 hours on and 8 hours off would tend to generate schedules for safety sensitive personnel based on a 20-hour clock, rather than the 24-hour clock, potentially disrupting the workers' circadian rhythms and introducing a significant potential for fatigue related error. Third, the proposed rule fails to provide any mechanism to compensate for the time period required for workers to readjust to changes in the time of day for commencement of shift work. This lack of time to adapt to a new sleep/wake cycle is a factor that could lead to safety critical tasks being performed during a worker's physiological window of circadian low, a factor that has been scientifically shown to be a major and recurring factor in industrial accidents.

Although the FAA is adopting the requirements as proposed, it does, however, intend to give ALPA's comments and this issue the study and attention they deserve. The FAA would need to assess the cost and operational effects of these changes. The crew rest rules in part 437 are similar to those in part 431 that apply to the licensing of reusable launch vehicle missions. The rest rules were originally based on crew rest requirements imposed by the Air Force at Federal launch ranges. Moreover, the FAA cannot impose more rigorous requirements without providing additional notice and seeking additional comment.

8. Pre-Flight and Post-Flight Operations

Section 437.53 requires a permittee to establish a safety clear zone and verify that the public is outside that zone before and during any hazardous operation. Masten Space Systems recommended that the FAA clarify how this requirement applies to post-flight ''safing'' where the vehicle lands, shuts off its engines, and then waits some period of time before it restarts its engines and takes off again. A permit is not required for operations between flights. Under § 437.53, ''pre-flight'' operation begins when a permittee prepares a reusable suborbital rocket for flight and ''post-flight'' operation ends when a permittee returns the reusable suborbital rocket to a safe condition after flight. In the X Prize Cup's Lunar Lander Challenge and Rocket Racing League examples provided by Masten, post-flight activities would begin once the vehicle is no longer in flight. Pre-flight activities would begin when preparations for the next flight meet the four-part test addressed in the scope of launch. However, operations between landing and take-off may all be covered under a permit if the vehicle is never safed.

9. Hazard Analysis

Section 437.55 requires a permittee to identify and characterize each of the hazards resulting from each permitted flight. An applicant would then assess the risks of each hazard. A pemittee must also carry out the risk elimination and mitigation measures derived from its hazard analysis, and ensure the continued accuracy and validity of its hazard analysis throughout the term of its permit.

The hazard analysis required by § 437.55 must determine the likelihood of occurrence and the potential consequence of each hazard before risk elimination or mitigation. In the NPRM, the FAA proposed that the applicant determine the likelihood of occurrence and consequence for each hazard. It was not clear in the NPRM that the applicant must analyze the risk of each hazard before identifying measures to mitigate or eliminate that risk. This step helps distinguish between those hazards requiring mitigation and those that pose little apparent risk to the public, and allows the operator to focus its system safety effort on the most significant risks to the public.

As part of the hazard analysis required by § 437.55, an applicant must identify and describe the risk elimination and mitigation measures necessary to ensure that the likelihood of adverse consequence of each hazard meets the following criteria:

(A) The likelihood of any hazardous condition that may cause death or serious injury to the public must be extremely remote.

(B) The likelihood of any hazardous condition that may cause major property damage to the public, major safety-critical system damage or reduced capability, a significant reduction in safety margins, or a significant increase in crew workload must be remote.

These qualitative criteria are statements of risk, including both the severity of the consequences and the likelihood. They are necessary to define an acceptable inverse relationship between likelihood and the severity of each hazard. The qualitative criteria are derived from FAA aircraft regulations and standards that the military has historically applied to launch safety. These standards have not quantified the likelihood of a hazard occurring. The probability of some hazards occurring cannot be quantified with certainty. For example, the likelihood of a procedure failing is difficult to quantify prior to obtaining experience with that procedure. The failure rate may not be available for the new systems being created. Even if the aircraft regulations and launch safety requirements assigned quantitative criteria to the likelihood of all hazards, the commercial launch industry is still too new to provide the data necessary for quantitative criteria.

The Federation pointed out that Advisory Circular (AC) 25.1309–1A does not identify all decreased safety margins or all increased workload as areas of concern. Instead, the AC refers only to reductions or increases that are significant. The Federation and XCOR were concerned that they could not meet the proposed requirement that any hazardous condition that could lead to either a decreased safety margin or an increased workload be remote. The FAA did not intend so broad a requirement and is, therefore, requiring that the likelihood of significant changes be remote.

Section 437.55(a)(1)(ii) requires an applicant to identify and describe hazards, including but not limited to software errors, if an operator uses software. XCOR was concerned that this requirement could be used to deny a permit to an applicant whose vehicle used no software, and thus had no software error hazards to describe. The FAA agrees that if the operator does not use software there is no potential for software errors.

Although the FAA requires that a permittee conduct a hazard analysis, the FAA does not require a permittee to have a System Safety Program Plan (SSPP). An SSPP defines the methodology and products of a system safety program. The SSPP helps ensure that safety, consistent with overall system objectives and requirements, is designed into the system. An SSPP can also ensure that methods employed to remove hazards and reduce risks are properly applied and documented, and that changes in system design, configuration, or application are evaluated and analyzed for impacts to overall system safety. Spaceport Associates agreed with the FAA that no SSPP should be required for a permit. While the FAA does not require a SSPP for experimental permits, the FAA strongly encourages an operator to develop its own plan as part of a strong safety culture.

10. Operating Area Containment

As proposed in the NPRM, § 437.57(a) requires that during each permitted flight, a permittee contain its reusable suborbital rocket's instantaneous impact point (IIP) within an operating area and outside any exclusion area. During the application process, an applicant must demonstrate, at a minimum, either that there are physical limits on the ability of the reusable suborbital rocket to leave the operating area, or that an operator will use abort procedures and other safety measures derived from a system safety engineering process to contain the IIP. Section 437.57(b) defines an acceptable operating area, and § 437.57(c) states that the FAA may prohibit a reusable suborbital rocket's IIP from traversing certain areas within an operating area, by designating one or more areas as exclusion areas. These sections are the same as proposed in the NPRM, except for § 437.57(b).

The FAA has clarified § 437.57(b)(3) and (4). Section 437.57(b)(3) requires that an operating area not contain or be adjacent to a densely populated area or large concentrations of members of the public. The reference to large concentrations of members of the public was moved from proposed § 437.57(b)(4) to § 437.57(b)(3) for consistency. Section 437.57(b)(4) now requires that an operating area not contain or be adjacent to significant automobile traffic, railway traffic, or waterborne vessel traffic. This new requirement is important to ensure that hazards associated with a failure do not harm the public, as pointed out by a NASA commenter.

a. Reliability

A representative from NASA recommended during interagency coordination that the FAA require information on the reliability of any system used to ensure containment. Information on reliability can include reliability prediction, reliability test data, and corrective actions taken as a result of operational anomalies. Reliability predictions may not be necessary or valid in all cases. Reliability test data, on the other hand, will likely be developed because of the requirement for verification evidence, which is measurable evidence that safety measures are effective and have been properly implemented. The requirement for verification evidence may be satisfied by the submission of reliability analysis and test data necessary to support an applicant's demonstration of vehicle containment. As stated in the FAA Guide to Reusable Launch and Reentry Vehicle Reliability Analysis, reliability analysis techniques such as Fault Tree Analysis and Reliability Block Diagrams, supplemented by reliability test data, are acceptable approaches for design verification. Therefore, reliability analysis and test methods could be used in verifying containment systems. In addition, § 437.73(b) requires that a permittee report any anomaly (and corrective actions for each anomaly) of any system necessary to keep the vehicle within its operating area. Anomaly reporting is part of a strong reliability engineering effort, and provides the operator and the FAA with added information to evaluate the reliability of those systems.

The NASA representative also noted that the hazards associated with a failure are what should be contained, not the vehicle's instantaneous impact point. NASA defines containment as a ''technique that precludes hazards (such as vehicle, debris, explosive, or toxic) from reaching the public, the workforce, or property in the event of a vehicle failure or other mishap.'' NASA Procedural Requirement 8715.5, Range Safety Program, 29 (Jul. 8 2005). The commenter made a similar comment about § 437.57(b)(1), which requires that an operating area be large enough to contain each planned trajectory and all expected vehicle dispersions. The commenter noted that this requirement seems to imply that it would be acceptable to run a planned instantaneous impact point trajectory right along the boundary of the operating area. The commenter suggested also requiring a margin that accounts for the potential dispersions of debris and any other hazard caused by a vehicle failure. The FAA agrees that what is important for public safety is that hazards are contained, not a rocket's IIP. For this reason, § 437.57(b)(3) mandates that a densely populated area may not be adjacent to an operating area. The separation of the edge of the operating area from densely populated area effectively creates a buffer around an applicant's operating area. That buffer will serve to keep hazards away from the public in the event of a mishap.

b. Operating Area Publication

In the NPRM, the FAA stated that it would publish approved experimental permit operating areas on its Web site. Although XCOR Aerospace agreed with informing the public of potential hazards, it was concerned that doing so might encourage members of the public to converge on that area to watch the flights, potentially creating an unsafe condition. Although the FAA agrees that publication may invite undesirable attention, the FAA believes it is important to inform the public of potential hazardous operations so that they can be aware of potential hazards. In addition, the FAA intends to use its Web site as a repository for locations and characteristics of acceptable operating areas to provide guidance to future applicants proposing operating areas. In this fashion, the operating area list will provide examples of acceptable operating area characteristics, such as amounts of unpopulated and sparsely populated areas and automobile, railway, and waterborne vessel traffic.

c. Definitions of Unpopulated, Sparsely Populated, and Densely Populated Areas

In the NPRM, the FAA requested comments as to whether it should adopt specific definitions for ''unpopulated,'' ''sparsely populated,'' and ''densely populated'' areas for purposes of determining an acceptable operating area. The Federation and XCOR agree that the FAA should not define these terms. The Federation commented that operating areas are site dependent. The Federation's statement is true because similarly sized operating areas with identical total populations may have a different distribution of the population, leading to different risks. Likewise, how the calculations are performed may change the apparent population density. For example, there may be an area of 100 square miles, with all the population clustered in the southeast corner in a town. The density would appear to be low if the population were distributed over the whole 100 square miles. On the other hand, if the operating area were assessed in blocks of one square mile at a time, certain areas would show high density.

Because the FAA wants to gain experience in assessing these questions, the FAA will define these terms on a case-by-case basis for now. However, the FAA may in the future define these terms if experience shows the merits of doing so. Those definitions could be provided as guidance material rather than as a change to the regulation.

d. Risk Criteria: Qualitative or Quantitative

As the FAA discussed in the NPRM, the FAA will not require an applicant to perform a quantitative risk analysis to obtain a permit. This means that a permittee will not have to calculate expected casualty and individual risk, which are the measures of acceptable risk for licensed activities. In their stead, the FAA is mandating qualitative risk criteria under section 437.55(a)(3), containment within an operating area,

risk mitigation measures derived from hazard analyses, and corrective actions that respond to anomalies.

Most commenters agreed with not requiring a permittee to meet quantitative risk criteria. SpaceShot stated that the FAA's current 30 in a million expected casualty criterion is too stringent, even under a launch license. Spaceport Associates agreed that no quantitative risk should be required under a permit because there is not enough real data. Blue Origin agreed with the FAA that the reliability data necessary for a quantitative analysis typically can be obtained by the very research and development testing that Congress intended permits to enable. Blue Origin also considered the approach consistent with the legislative history of the CSLAA, where the FAA was urged to assess the appropriateness of requiring risk calculations for permits, and to explore alternatives. XCOR also agreed that expected casualty was not a proper tool for assessing risk.

The Federation stated that calculating a probability of failure for newly developed reusable suborbital rockets would be extremely difficult, if not impossible. Any vehicle operating under an experimental permit will be testing new technologies and, by definition, will lack the flight history and operational experience needed to determine the probability of failure. Also, the capability of most reusable suborbital rockets to use incremental testing and envelope expansion may provide for a higher probability of success for a vehicle's ultimate design as compared to the initial launches of expendable launch vehicles. For these reasons, the Federation believes it would be inapposite to apply commonly accepted probabilities of failure for expendable launch vehicles to early launches of reusable suborbital rockets.

XCOR suggested that the FAA should encourage applicants to perform quantitative risk analyses and that, if an applicant were to submit such an analysis, the FAA would have to accept it. The FAA agrees that performing valid quantitative risk analyses should be encouraged, even if these analyses are not required to obtain a permit. In addition to the added perspective on safety that these analyses provide, the experience gained in performing such an analysis could prove valuable if the permit applicant wishes to apply for a launch license. However, a quantitative risk analysis is not a substitute for any of the other analyses required to obtain a permit, and the performance and submission of such an analysis does not excuse an applicant from any of the requirements of part 437.

Quantitative risk analysis by itself does not minimize the risk to the uninvolved public. Rather, the decisions made based on the results of the assessment reduce the risk. At this stage, the hazard analysis and the qualitative risk assessment provide the best route to making those informed decisions.

Rocketplane stated that requiring an estimate of the probability of a third-party catastrophic event, which it described as ''expected casualty,'' would ensure adequate safety analyses to minimize the risk to the uninvolved public, especially in the case of flight over a populated area. Rocketplane stated that without an expected casualty calculation, the industry would be subjected to a major setback if an experimental vehicle were to crash and harm members of the public.

Although the FAA shares some of Rocketplane's concerns, it is not practicable to mandate quantitative risk assessments for experimental permits at this time. As discussed in the NPRM, the FAA considered requiring quantitative risk analyses. However, uncertainties in launch vehicle reliability, operating environments, and the consequences of a failure prevent a straightforward application of this analysis technique. The data concerning reliability, operating environment, and consequences typically can be obtained by the very research and development testing that Congress intends permits to enable.

11. Key Flight-Safety Events

''Key flight-safety event'' means a permitted flight activity that has an increased likelihood of causing a launch accident compared with other portions of flight. In the NPRM, the FAA proposed a similar definition, but referred to ''failure'' instead of ''launch accident,'' which is already defined by § 401.5.[6] Under § 437.59, a permittee must conduct any key flight-safety event so that the reusable suborbital rocket's instantaneous impact point, including its expected dispersion, is over an unpopulated or sparsely populated area.

12. Landing and Impact Locations

Section 437.61 requires a permittee to use a landing or impact location that is big enough to contain an impact, including debris dispersion; and that does not contain any members of the public at the time of landing or impact. This requirement applies for nominal landing or any contingency abort landing of a reusable suborbital rocket, or for any nominal or contingency impact or landing of a component of that rocket.

This section is a clarified version of that proposed in the NPRM. It requires an operator to account for nominal or contingency impacts or landings of a rocket component rather than all possible impacts. This clarification should assuage XCOR's concern that the requirement could be interpreted to mean that wherever a component could possibly impact must not contain any members of the public, thus precluding any flight over any members of the public.

XCOR and the Federation were also concerned that this section could be interpreted to mean that a spaceport operator would have to close its spaceport to all other traffic during every flight of a reusable suborbital rocket. They believe that at Mojave Airport, where the FAA has defined the launch site as all active runways, taxiways and hangars, this interpretation would effectively close the airport for the duration of every suborbital rocket flight.[7] This was never the FAA's intent. The requirement says that a landing location has to be big enough to contain impact hazards. The landing or impact location, not the whole launch site, has to be clear of members of the public. A landing area could be a runway. A landing area may or may not include the whole launch site and could simply be a runway. The size of the landing area must be large enough to contain impact hazards in the case of a hard landing or impact at the planned location. An entire spaceport, including hangar areas, would only have to be closed if necessary to contain impact hazards.

[6] A launch accident means:

(1) A fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the flight;

(2) Any damage estimated to exceed $25,000 to property not associated with the flight that is not located at the launch site or designated recovery area; or

(3) An unplanned event occurring during the flight of a launch vehicle resulting in the known impact of a launch vehicle, its payload or any component thereof:

(i) For an expendable launch vehicle (ELV), outside designated impact limit lines; and

(ii) For an RLV, outside a designated landing site. 14 CFR 401.5.

[7] XCOR raised the closing of runways at Mojave Airport for the landing of SpaceShipOne as an example of the FAA not permitting overflight because of concerns of any impact. The runways were closed not because of potential crashes during overflight as XCOR suggests, but because of the need to account for the debris of a potential impact on landing. Runways that intersected the landing runway also had to be closed so that no planes would enter the landing location.

13. Agreements With Other Entities Involved in a Launch or Reentry

Section 437.63 requires an applicant to have a written agreement with a Federal launch range operator, a licensed launch site operator, or any other party that provides access to or use of property and services required to support the safe launch or reentry under a permit. Although the FAA did not receive a comment about this, the agency is adopting a narrower version of the requirement than originally proposed. In the NPRM, the FAA proposed that the applicant enter into a written agreement with ''* * * any other party that provides access to or use of property and services required to support a permitted flight'' regardless of whether the property or services were required for safety.

Blue Origin commented that the FAA should not require that a permittee enter into such agreements if the permittee intends to use its own launch site exclusively. Such agreements may not be necessary if the private use operator has no need for the property or services of another. However, even operators of private sites may need the safety services of outside parties. For example, a local fire department may be used for emergency response.

When a launch occurs over navigable waters, § 437.63 requires that a permittee enter into and comply with a written agreement between the applicant and the local United States Coast Guard (USCG) district to establish procedures for issuing a Notice to Mariners before flight. In the NPRM, the FAA proposed that this requirement apply to overflight of any water. The Federation and XCOR recommended limiting this requirement to overflight of ''navigable'' water. Because the U.S. Coast Guard only has jurisdiction over navigable water, the FAA is adopting this narrower version. Section 437.63 also requires a written agreement between the applicant and the Air Traffic Control authority with jurisdiction over the airspace through which a flight is to take place, for measures necessary to ensure the safety of aircraft, such as launch notification procedures and limitations on days or times of launches. This is the same as proposed in the NPRM, but now specifically identifies that the agreement must demonstrate satisfaction of §§ 437.69(a) and 437.71(d). This clarification will ensure that the agreement covers the communications and airspace issues addressed in those sections.

14. Collision Avoidance Analysis

Section 437.65 requires a collision avoidance analysis for a suborbital launch with a planned maximum altitude greater than 150 kilometers. A permitted launch may not pass within 200 kilometers of a manned or mannable orbital object throughout flight. Although Spaceport Associates supported a minimum altitude for requiring a collision avoidance analysis, it suggested that the FAA continue to work with the U.S. Strategic Command (USSTRATCOM) to determine an alternate distance, because as flight rates increase it could be more difficult to schedule suborbital flights in general. The FAA consulted with USSTRATCOM during the development of the NPRM and intends to continue the partnership to explore methods of improving the process as activity increases. Efforts are underway to modernize the collision avoidance analysis. Meanwhile, the FAA will continue to allow an applicant to propose an alternate distance, provided the distance demonstrates an equivalent level of safety and accounts for all uncertainties.

15. Tracking a Reusable Suborbital Rocket

Under § 437.67, a permittee must, during permitted flight, measure in real time the position and velocity of its reusable suborbital rocket. This is a change from the NPRM, which proposed that a permittee provide Air Traffic Control with the ability to know the real time position and velocity of the reusable suborbital rocket while operating in the National Airspace System. The purpose of this proposal was to allow Air Traffic Control to track a permitted vehicle if it were to fly outside its operating area. The proposal prompted opposition from Blue Origin, the Federation, and XCOR. Blue Origin commented that the proposed tracking and data requirements may not be possible to fulfill for short duration, low-altitude testing, and asked that the FAA not mandate such tracking.

The Federation and XCOR had no objection, in principle, to being required to make real time position and velocity information available to Air Traffic Control, but felt they could not accept responsibility for what Air Traffic Control did, or failed to do, with the information. Nor, the Federation pointed out, could permittees be responsible for overcoming the limitations of the air traffic control system, or for fulfilling a technical requirement if no technology was available at a reasonable price.

The Federation noted that the most likely method of complying with the proposed requirement was to use a standard, commercially available transponder. However, commercially available Mode C transponders cannot currently report an altitude greater than 62,000 feet. In addition, by FAA regulations, such transponders must report pressure altitude, and for a vehicle going faster than the speed of sound while increasing in altitude, the pressure altitude can lag actual altitude by thousands of feet. The Federation described ADS–B as much more appropriate, and affordable, but noted that its use is constrained by the fact that the FAA's air traffic control system does not offer ADS–B throughout the United States.

The FAA agrees with the comments for the reasons provided. The requirement for a permittee to measure in real time the position and velocity of its reusable suborbital rocket, coupled with the requirement, discussed below, that a permittee communicate with Air Traffic Control during all phases of flight, should provide Air Traffic enough information to protect the public if a permitted vehicle flies outside its assigned operating area. However, the FAA may require the permittee to carry a transponder or similar device to allow Air Traffic Control to know directly the real time position and velocity of the reusable suborbital rocket if a vehicle is flying below 62,000 feet and slowly enough to communicate with Air Traffic Control's system. Satisfaction of these conditions is extremely unlikely given the velocities of suborbital rockets. The FAA will implement this requirement on a case-by-case basis through the terms and conditions of a permit, because the agency does not believe that the need for such a requirement is sufficiently widespread to implement a requirement of general applicability. Nor may it always be necessary. The characteristics of both the vehicle and the surrounding area will have to necessitate imposing the requirement.

As proposed in the NPRM, § 437.67 also requires a permittee to provide position and velocity data for post-flight use.

16. Communications

Section 437.69 requires that a permittee communicate with Air Traffic Control during all phases of flight, as proposed in the NPRM. XCOR agreed that continuous communication is necessary, even when flying above 60,000 feet. This requirement has greater import now that the FAA does not require Air Traffic tracking of a

launch vehicle. If a vehicle leaves an operating area, this communication link will allow a permittee to relay position and velocity information to Air Traffic.

17. Flight Rules

Section 437.71 requires that a permittee follow certain flight rules. They are the same as proposed in the NPRM, with one exception. In the NPRM, the FAA proposed that a permittee could not operate a reusable suborbital rocket within Class A, Class B, Class C, or Class D airspace or within the boundaries of the surface of Class E airspace designated for an airport, unless the permitee had prior authorization from the air traffic control facility having jurisdiction over that airspace. The FAA is not adopting this provision because it is unnecessary. The agreement with the responsible Air Traffic Control authority required by § 437.63 should include any need for prior authorization.

18. Anomaly Recording and Reporting and Implementation of Corrective Actions

Section 437.3 defines ''anomaly'' as a problem that occurs during verification or operation of a system, subsystem, process, facility or support equipment. Section 437.73 requires a permittee to record and report anomalies and implement corrective actions for those anomalies. A permittee must also report to the FAA any anomaly to, and corrective action for, any system that is necessary for compliance with the requirements to perform a hazard analysis, to contain a rocket within an operating area, and to conduct key flight-safety events properly. A permittee must take each corrective action before the next flight.

The FAA had proposed to define ''anomaly'' as an apparent problem or failure that occurs during verification or operation and affects a system, a subsystem, a process, support equipment, or facilities. The Federation questioned whether, by defining ''anomaly'' to include failures while simultaneously defining failures to include any anomalous condition, the definitions created a circular loop whose real meaning would be open to broad interpretation.[8]

Spaceport Associates suggested that the FAA limit anomalies to those that were potentially safety-critical. The FAA recognizes that the term anomaly is a broad term, and chose it to include issues during verification and operation of systems and subsystems that are not necessarily flight failures but could put the public at risk. The FAA is adopting the term anomaly with the modifications discussed above, but is clarifying the anomaly reporting requirements of § 437.73 to reduce concerns about the standard being too broad and burdensome. The FAA is only concerned about anomalies of systems, subsystems, processes, facilities, and support equipment that are essential for safe performance or operation. Therefore, the FAA is only requiring, under § 437.73, a permittee to report anomalies that are safety-critical.

Spaceport Associates commented that hazard analysis and anomaly reporting are good ideas, and will normally be done internally in any case by an operator conducting the test flights. Blue Origin suggested limiting the recording requirement to anomalies that occur during permitted flight. Blue Origin also recommended that the FAA only require an operator to report anomalies for specific systems, such as guidance and propulsion systems.

Anomalies that occur during system and subsystem verification testing are potential precursors to launch accidents. Recording and reporting these anomalies allow the operator and the FAA to analyze and evaluate problems that could lead to launch accidents. The goal of a strong system safety program is to prevent mishaps. Analyses of accidents often show that clues existed before the mishap in the form of anomalies during the project life cycle, including before flight. Anomalies that occur throughout the life cycle can provide important information about what conditions an operator needs to control. Therefore, it is prudent for the launch vehicle operator to identify, analyze, and mitigate not just anomalies that occur during flight, but also anomalies in vehicles and safety-related subsystems and components that occur on the ground. Although the FAA will not limit the reporting requirement to anomalies that occur during flight, the FAA does not wish to impose an unnecessary recordkeeping burden on the launch vehicle industry. Therefore, the FAA is not requiring that an operator report all anomalies, but only those that are safety-related.

The FAA is not limiting the reporting requirement to specific systems, but does limit the reporting requirement to anomalies associated with those systems necessary for complying with the hazard analysis, operating area, and key flight-safety event requirements. Therefore, the requirements are sufficiently narrowly drawn.

19. Additional Safety Requirements

Under § 437.77, the FAA may impose additional safety requirements on an applicant or permittee proposing an activity with a hazard not otherwise addressed in part 437. This activity may include a toxic hazard or the use of solid propellants. The FAA may also require the permittee to conduct additional analyses of the cause of any anomaly and corrective actions. XCOR agrees that the FAA needs this regulation because no one can predict every vehicle concept that will come along. XCOR stated, however, that the FAA must use common sense in its application.

20. Allowable Design Changes; Modification of an Experimental Permit

Section 437.85(a) states the FAA will identify in an experimental permit the type of changes that a permittee may make to the reusable suborbital rocket design without invalidating the permit. This is the same as proposed in the NPRM.

Blue Origin was concerned that the requirement might restrict modifications to the vehicle design, other than changes to the rocket motor. The requirement's reference to a ''suborbital rocket'' includes the entire vehicle, not just the rocket motor.

21. Pre-Flight Reporting

Section 437.89 requires a permittee to provide information regarding its payload, timing of flights, the operating area for each flight, and the planned maximum altitude not later than 30 days before each flight or series of flights conducted under an experimental permit. In addition, not later than 15 days before each permitted flight of greater than 150 km altitude, a permittee must provide the FAA its planned trajectory for a collision avoidance analysis. This requirement is the same as that proposed in the NPRM.

Spaceport Associates was concerned with submitting a flight trajectory at least two weeks before each flight, because an operator may want to insert a new mission with minimal changes just a few days after a previous flight. As Spaceport Associates recognized, this information is for USSTRATCOM so it can perform a collision avoidance analysis. Spaceport Associates asked what flexibility would be possible as flight rates increased. The FAA will

[8] The Federation also recommended against using or defining the term ''anomaly'' and replacing it with the term ''failure.'' The FAA agrees that some confusion could have resulted from defining ''anomaly'' in terms of failure. Anomalies are meant to encompass not only failures in flight but also problems that could result in flight failures in the future, including human errors, software faults, and incorrect procedures. Because ''problem'' encompasses failures, reference to ''failure'' is not necessary.

facilitate an agreement with USSTRATCOM to accommodate the needs of any particular flight test program, but operators must still provide the information 15 days in advance so the collision avoidance analysis may be conducted. The FAA does entertain requests for waivers to its timing requirements, but any flexibility in that regard will depend on the availability of USSTRATCOM resources.

22. For-Hire Prohibition

Section 437.91 states that no person may operate a reusable suborbital rocket under a permit for carrying any property or human being for compensation or hire. This is unchanged from the NPRM.

In the NPRM, the FAA proposed that, with one exception, the definition of ''compensation or hire'' is the same as that used in the aviation context. The FAA explained that compensation may include any form of payment including payment of operating costs such as fuel, a tax deduction if a flight is for charity, payment by a third-party, any non-monetary exchange for carrying a person for free (for example, the operator receives free advertising, parts, or maintenance, and the like), or any exchange of value including the bartering of goods or services in exchange for the transportation. The one exception, as stated in the NPRM, is that the FAA does not consider goodwill compensation. The FAA also explained that winning prize money, advertising revenue from logos, and flying space flight participants for free [9] would be allowed under this section. The Federation and XCOR applauded the FAA's proposal and requested no changes.

Masten, Mr. Paul T. Breed, Spaceport Associates, and Beyond Earth suggested that inert payloads such as souvenirs and trinkets should be allowed for compensation to help fund entrepreneurial companies during vehicle development. The FAA is bound by the CSLAA and unable to make this exception. The CSLAA prohibits carrying property for compensation or hire under a permit. Any payload, including a souvenir, constitutes property and its carriage for hire is not allowed. Masten inquired about the sale of images from onboard cameras. The sale of images from onboard still or video cameras would violate § 437.91. Mr. Breed requested clarification on whether the sale of used rocket parts would be permissible. The sale of a used rocket part would not violate § 437.91 if the rocket part was not carried on board for compensation or hire. The FAA can, however, envision a launch operator changing out a component of a vehicle that has flown in space if, due to the component having flown in space, the used component is worth more than a replacement. Or, as Paul Breed also suggests, selling used propellant tank insulation that has been imprinted with post card images. These practices are prohibited under § 437.91.

Tripoli commented that some high power rocket practitioners partner with universities to fly student research payloads, generally no bigger than a coffee can. The university pays for the rocket motors. Tripoli wants to ensure that this kind of cooperation is not considered ''for hire.'' This type of cooperation would not be allowed under an experimental permit. A launch operator may not receive any compensation, including the cost of a motor, for transporting a payload.

Any interpretation of the statutory prohibition will be guided by the principle that a permit is to be used for research and development, crew training, or showing compliance with license requirements. An operator seeking to generate revenue may do so under a license.

23. Inspection

As proposed in the NPRM, under § 437.95, a permittee may launch or reenter additional reusable suborbital rockets of the same design under the permit after the FAA inspects each additional reusable suborbital rocket. Blue Origin commented that inspecting any additional vehicles once a permit has been issued ''seems particularly unnecessary.'' This inspection, however, is necessary to ensure that any new vehicle is built as represented in the original application for the permit issued.

*B. Other Regulatory Provisions Affected by Permit Authority and This Rulemaking*

In addition to proposing a new part 437, the FAA proposed changes, mostly administrative in nature, to existing regulations to reflect the FAA's new authority to issue permits. Specifically, the FAA proposed changes to parts 401, 404, 405, 406, 413, 420, and 431. The FAA did not receive any substantive comments on parts 404, 405, 406, or 415. The FAA received comments on parts 401, 413, 420, and 431, as discussed below.

1. Activities Exempt From Licensing or Permitting

In § 401.5, the FAA defines amateur rocket activities as unmanned launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—that is, gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch. Under § 400.2, the licensing and permitting requirements do not apply to amateur rocket activities. As proposed in the NPRM, the definition of amateur rocket activities now only applies to unmanned activities, because the CSLAA prohibits the FAA from authorizing the launch or reentry of a launch vehicle or a reentry vehicle without a license or permit if a human being will be on board.

Paul T. Breed recommended that the FAA incorporate a waiver process in the proposed regulations for ''flying unmanned hovering/control development flights.'' The FAA notes that under § 400.2, the launch of unmanned vehicles does not require a license or permit, provided that the launch falls under the definition of amateur rocket activities. If a hovering vehicle does not meet the definition of amateur rocket activities, it must operate under a license or permit. Part 404 provides a process for otherwise obtaining a waiver.

XCOR suggested that, if the definition of amateur rocket activities requires everyone who proposes to fly a human being on a rocket to get an experimental permit, FAA oversight of rocket belt flights would be required. XCOR believes this would be a mistake in that rocket belt operators have made over 2000 public demonstration flights without harming a member of the public, all without oversight. XCOR believes rocket belts are sporting equipment, like SCUBA gear, rather than vehicles, and thus not subject to FAA oversight. The FAA agrees with XCOR that rocket belts, as they currently exist, are not vehicles. As such, they are not regulated under Chapter 701.

The National Association of Rocketry and Tripoli requested that sport rocketry be explicitly exempt from any regulation implementing the Commercial Space Launch Amendments Act of 2004. This is not necessary, because the requirements of 14 CFR chapter III currently do not apply to amateur rocket activities, as

[9] Masten questioned why space flight participants could board a flight under a permit but an operator could not charge for carriage of property. There is no difference: an operator may not charge for the carriage of either.

defined in 14 CFR 401.5. An operator need only satisfy the amateur definition to avoid having to comply with 14 CFR Ch. III.

2. Scope of ''Launch''

This final rule modifies the definition of ''launch'' to ensure that the FAA issues a permit only for activities that are closely proximate in time to flight, entail critical steps preparatory to initiating flight, are unique to space launch, and are inherently so hazardous as to warrant the FAA's regulatory oversight (the ''four-part test''). The FAA is also defining the end of launch for a suborbital RLV flight after vehicle landing or impact on Earth, and after each activity necessary to return the reusable suborbital rocket to a safe condition after the vehicle lands or impacts. Blue Origin and XCOR[10] agreed with the FAA's proposal to use the four-part test to interpret the beginning of launch on a case-by-case basis for each vehicle.

The same commenters also recommended that the FAA apply the four-part test to all RLV launches, regardless of whether conducted under a license or a permit. The commenters noted that unlike expendable launch vehicles (ELVs), RLVs may stay at a launch site for multiple flights, in cycles of storage, pre-flight, launch, and return to storage. These cycles may last days or years, depending on the RLV. Applying the same approach used for one-time expendable vehicles would mean perpetual regulatory oversight for RLVs. Without addressing the merits of these arguments, the FAA notes that a change to the RLV licensing requirements is outside the scope of this rulemaking. The FAA does plan to update 14 CFR part 431 in the near future and will consider the issue at that time.

XCOR appeared to suggest that the definition of launch not include pre-flight activities. Congress, however, mandated that pre-flight activities be included in the definition of launch when it amended Chapter 701 to include ''activities involved in the preparation of a launch vehicle ... for launch, when those activities take place at a launch site in the United States.'' 49 U.S.C. 70102(4). Accordingly, the FAA must treat preparatory activities as part of a launch. For purposes of issuing a permit, it will do so in accordance with the four-part test.

3. Permit as a Pre-Requisite to a License

Section 413.3(f) allows a person, individual, or foreign entity otherwise requiring a license under § 413.3(a) to instead obtain an experimental permit to launch or reenter a reusable suborbital rocket. In the NPRM, the FAA noted that certain vehicle operations may not be capable of demonstrating compliance with the collective and individual risk criteria of a license without the flight test data obtained under a permit. The Federation pointed out that this language implies that, if an applicant is unable to show compliance with the criteria of a license without the use of a permit, then it effectively requires someone to obtain a permit before obtaining a license.

To clarify, demonstrating compliance with the collective and individual risk criteria of a license without the flight test data may be challenging, time consuming, and expensive for certain operators of unproven launch vehicles. How much of a challenge this is depends on the launch vehicle characteristics, launch location, and flight profile. The experimental permit is designed to enable a launch operator to test its vehicle and obtain necessary flight test data for a license. Section 413.3 clearly states that the experimental permit is a voluntary alternative option to a license.

4. Address Change

In this final rule, the FAA has modified the address in § 413.7 for applicants to send a license or permit application. It is now more generic to apply to both licenses and permits.

5. Launch Site Location Review

Under § 420.30, if an applicant plans to use its proposed launch site solely for launches conducted under an experimental permit, the FAA will approve the launch site location if the FAA has already approved an operating area under part 437. XCOR agreed with this approach, approving of the fact that it would allow multiple operators to build on each others' regulatory successes.

6. Verification of System Safety Analysis

Section 431.35(d)(7) requires an applicant for a RLV license to provide data that verifies the risk elimination and mitigation measures resulting from the applicant's system safety analyses. In the NPRM, the FAA proposed that an applicant provide data that verifies the applicant's system safety analyses. XCOR stated that, according to the proposed definition of verification, the FAA would require the applicant to demonstrate, by measurement, that its safety system performed as intended. Therefore, XCOR believes that the FAA proposed that the applicant verify its safety system through flight test before an operator may be awarded a license or permit to perform that flight test, which would be impossible.

The FAA did not intend require an applicant to demonstrate a safety system by flight test before the FAA authorizes the flight test. The FAA proposed the change to § 431.35(d)(7) to clarify that it requires evidence that risk elimination and mitigation measures resulting from the system safety analysis are effective and have been properly implemented. The risk mitigation measures need not be a single safety system. In addition, this verification data requirement can be met through analysis, test, demonstration or inspection, and does not have to be met through flight test.

## III. Rulemaking Analyses

*Paperwork Reduction Act*

This final rule contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget (OMB) for its review. Persons are not required to respond to a collection of information unless it displays a currently valid OMB number.

*Title:* Experimental Permits for Reusable Suborbital Rockets

*Summary:* The Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration (FAA), Department of Transportation, is amending the FAA's commercial space transportation regulations under the Commercial Space Launch Amendments Act of 2004. The FAA adopts application requirements for an operator of a reusable suborbital rocket to obtain an experimental permit. The FAA also adopts operating requirements and restrictions on permitted launch and reentry.

*Use of:* The information collected will be used by the FAA to decide whether to issue an experimental permit to an applicant, and to monitor a permittee's compliance with its permit and with applicable regulations.

*Respondents (including number of)*: The likely respondents to this information requirement are private entities planning to conduct developmental testing of reusable suborbital rockets. The FAA estimates that there will be eight to twelve private operators who would obtain permits over ten years.

*Frequency:* The frequency of this collection is determined by the respondents. They notify the FAA on the occasion of launching or applying for a permit.

*Annual Burden Estimate:* This rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the annual burden are shown below.

*Estimated Burden:* The FAA expects that private entities would incur reporting and recordkeeping costs when applying for and operating under a permit, as follows.

- Permittees would take 156 to 245 hours annually to submit materials to the FAA to renew their permits at an annual cost of $10,833 to $17,024.
- Permit applicants would spend 432 to 648 hours annually to provide information for the FAA to analyze environment impacts and to conduct a maximum probable loss analysis at a cost of $29,981 to $44,971 annually.
- Permit applicants would need 8 to 12 hours annually to describe methods used to meet tracking requirements at a cost of $533 to $799 annually.
- Permit applicants would need 1,248 to 1,872 hours annually to demonstrate to the FAA that their operations would protect public safety at an annual cost of $86,611 to $129,917.
- Permit applicants would need 96 to 144 hours annually to prepare a mishap response plan at a cost of $6,662 to $9,994 annually
- Permittees would need 91 to 182 hours annually to provide the FAA with pre-flight information at an annual cost of $6,315 to $12,631.

The total estimated industry annual paperwork burden would range from 2,031 to 3,103 hours at a cost ranging from $142,483 to $216,883. The estimated average annual hour burden would be 2,562 at an estimated average cost of $179,683.

The final rule would also increase paperwork costs for the Federal government because the FAA would have to spend hours on the following activities.

- The FAA would spend 4,992 to 7,488 hours annually at an annual cost of $259,784 to $389,676 consulting with applicants and reviewing and approving permit applications.
- The FAA would spend 58 to 86 hours annually at an annual cost of $5,651 to $8,475 (including travel expenses) to travel to and inspect suborbital rockets.
- The FAA would spend 96 to 144 hours annually at an annual cost of $4,996 to $7,494 identifying the types of changes that may be made to each reusable suborbital rocket without invalidating its permit.
- The FAA would spend 84 to 132 hours annually at an annual cost of $4,371 to $6,869 to re-inspect a vehicle during the permit renewal process.
- The FAA would require 437 to 686 hours annually at an annual cost of $22,731 to $35,721 to conduct the reviews required to determine whether a permit can be renewed.

The total estimated FAA annual paperwork burden would range from 5,666 to 8,537 hours at a cost ranging from $297,533 to $448,235. The estimated average annual hour burden to the Federal government would be 7,102 at an estimated average cost of $372,884.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

In the NPRM, the FAA solicited comments on minimizing ''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.'' XCOR stated that it has in the past had trouble sending large electronic files to the FAA. The FAA could improve this process by setting up a secure gateway. The FAA agrees that a simple process for exchanging electronic information could minimize the burden of the permit application process. Although the FAA does not have such capabilities at this time, a dedicated FTP server and the ability to accept electronic signatures are two possible enhancements to the FAA's capabilities. The FAA will consider acquiring such capabilities if enough demand for such capabilities arises.

Spaceport Associates stated that although there is no doubt that the proposed experimental permit regime will reduce paperwork for launch vehicle operators, the amount that remains due to what it described as the high initial burden is still going to cause a significant economic impact to small entities. To carry out the reporting would require the equivalent of a full-time staff member, in an organization that may have no more than ten to twenty people who are carrying out all the other functions of a company. Measures necessary to conduct launches or reentries safely may indeed require the equivalent of a full-time staff member or more, depending on the safety issues inherent in the launch vehicle characteristics, launch location, and flight profile. However, an organization with a good safety culture understands that spending money to prevent accidents is as important to the success of an organization as the money spent on critical components. Conducting safe launches is as important as conducting successful launches, and the resources to ensure safety should enjoy equal status with other aspects of the program. Relative to the current licensing regime the rule will not have a significant impact on small entities. The cost savings that a private entity will attain under this rule from not having to follow the current licensing regime will exceed the costs imposed by this rule.

*International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

*Regulatory Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). Currently, DOT agencies set the level at $128.1 million. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory

evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined this final rule has benefits that justify its costs, and is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 because it raises novel policy issues contemplated under that executive order. Accordingly, OMB has reviewed this final rule. The rule is also ''significant'' as defined in DOT's Regulatory Policies and Procedures. The final rule, if adopted, will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade and will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the draft regulatory evaluation supporting this final rule, are summarized below.

**Potentially Impacted Parties**

*Private Sector*

- Operators who will be conducting reusable suborbital rocket launches for research and development, showing compliance with license requirements, or crew training.
- The public who might be exposed to more risk.

*Government*

- Federal Aviation Administration that will be reviewing and approving applications, inspecting the vehicles and permitted activities, identifying allowable changes to the vehicle, and renewing permits.

**Assumptions and Ground Rules Used in Analysis (Discount Rate, Period of Analysis, Value of Life, Cost of Injuries)**

- All monetary values are expressed in 2004 dollars.
- The time horizon for the analysis is 10 years (2006 to 2016).
- Costs are discounted at 7%.
- Hourly burdened industry rate is $69.40.
- Hourly burdened government rate is $52.04.
- 8 to 12 entities will obtain permits over ten years.
- Permit issued to an entity is used for one year. It is renewed only once for the following year.
- Each permit holder will construct one vehicle to carry out all flights under the permit.
- As advised by industry, private sector entities will perform from 455 to 910 flights under experimental permits over ten years.
- Requirements fulfilled by Scaled Composites to license SpaceShipOne launches are considered current practice for a license.

Some provisions will cause a private sector entity to incur additional costs over the requirements of a license. The estimated additional person hours required per permit for each rule section are as follows.

| Section | | Person-hours incurred per permit |
|---|---|---|
| § 437.21 | General | 24 |
| § 437.37<br>§ 437.67 | Tracking<br>Tracking | 96 |
| § 413.23 | License or permit renewal | 24 |

Some provisions will allow a private sector entity to realize cost savings over the licensing regime. The estimated person hours saved per permit under each rule section are as follows.

| Rule section | | Person hours avoided per permit or per flight |
|---|---|---|
| § 437.25<br>§ 437.27<br>§ 437.29<br>§ 437.31<br>§ 437.53<br>§ 437.55<br>§ 437.57<br>§ 437.59 | Flight test plan<br>Pre-flight and post-flight operations<br>Hazard analysis<br>Verification evidence of operating area containment and key flight-safety event limitations<br>Pre-flight and post-flight operations<br>Hazard analysis<br>Operating area containment<br>Key flight-safety event limitations | 4,680 |
| § 437.41<br>§ 437.75 | Mishap response plan<br>Mishap reporting, responding and investigating | 120 |
| § 437.69 | Communications | 160 |
| § 431.33 | Safety organization | 2,080 |
| § 431.37 | Mission readinessa [a] | 40 |
| § 431.43 | Reusable launch vehicle mission operational requirements and restrictions | 2,080 |

[a] Person hours avoided are per flight.

Some provisions will cause the FAA to incur additional costs over the requirements of a license. The estimated additional person hours required per permit for each section are as follows.

| Rule section | Person hours incurred per permit |
|---|---|
| § 437.21 General | 72 |
| § 437.85 Allowable design changes; Modification of an experimental permit | 120 |
| § 413.23 License or permit renewal | 120 |

Some provisions will allow the FAA to realize cost savings over the launch licensing regime. The estimated person hours saved per permit for each rule section are as follows.

| Rule | Person hours avoided per permit |
|---|---|
| Pre-application consultation, and permit application review and issuance activities | 10,400 |

**Benefits**

The rule will provide an expeditious avenue for experimental commercial space transportation initiatives that will enhance and accelerate advances in this arena. This could lead to significant engineering breakthroughs that would benefit public consumption of commercial space transportation. Further, the cost savings realized by the commercial space transportation industry could be used to advance the overall safety of reusable suborbital rocket technology.

**Total Net Costs**

SUMMARY OF INCREMENTAL COST IMPACTS AND COST SAVINGS ATTRIBUTABLE TO THE RULE FOR THE TEN-YEAR PERIOD, 2006 THROUGH 2015

[In 2004 dollars]

| Category | Upper bound | | Lower bound | |
|---|---|---|---|---|
| | Undiscounted | Discounted [a] | Undiscounted | Discounted [a] |
| Commercial Space Transportation Industry Compliance Costs | $141,058 | $97,469 | $93,483 | $63,475 |
| Federal Aviation Administration Administrative Costs | 264,862 | 180,919 | 173,387 | 116,757 |
| Total Costs | 405,920 | 278,388 | 266,870 | 180,232 |
| Commercial Space Transportation Industry Cost Savings | 11,709,168 | 8,049,830 | 7,336,968 | 4,976,830 |
| Federal Aviation Administration Cost Savings | 6,494,592 | 4,512,659 | 4,329,728 | 2,951,467 |
| Total Cost Savings | 18,203,760 | 12,562,489 | 11,666,696 | 7,928,297 |
| Total Net Cost Savings | 17,797,840 | 12,284,101 | 11,399,826 | 7,748,065 |

[a] Calculated using a discount factor of seven percent over a ten-year period. (See Tables A–5 to A–30 in the Appendix.)

*Comparison of Benefits and Costs*

The rule will result in an estimated net cost savings of $11.4 million ($7.7 million discounted) to $17.8 million dollars ($12.3 million discounted). The rule is expected to enhance and accelerate advances in commercial space transportation. It will do so by making it less costly for the industry to fly research and development missions to test new design concepts, new equipment or new operating techniques, to perform crew training, and to demonstrate compliance with license requirements. Without the new availability of a permit, an operator will have to obtain a license, which imposes more costs for these activities.

The rule might increase risk to public safety, because it will require fewer safety analyses and will eliminate other requirements such as a mission readiness review, a communications plan prepared in advance of the launch (the rule would require the private sector entity to be in contact with Air Traffic), and a safety organization that are required under a launch license. At this stage of industry development, it is premature to quantify any potential risk increase because too little is known about the safety impacts these measures may have. Additionally, the FAA has attempted to counterbalance any negative effects on safety of the more lenient permitting requirements by requiring operations to occur within a specified area where risk of harming others is reduced. The FAA anticipates that it will eventually obtain the experience and information necessary to quantify any increase in risk in a measurable fashion. This is because the FAA plans to monitor the safety of permitted launches to ensure that the approach is adequate to protect public safety.

*Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale

of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule will not have a significant impact on a substantial number of entities for the following reason:

The FAA concludes that a substantial number of firms in the human space flight industry will be affected by the rule because many of the companies in the fledgling industry are small. The rule will allow these entities to realize cost savings that they would otherwise not have gained under a license-only regime. Because, with the exception of Virgin Galactic, all the entities assessed in the regulatory evaluation are small entities, the same analysis used there applies to the regulatory flexibility determination. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. For experimental commercial space transportation activities, there are no international standards. The FAA has assessed the potential effect of this rule and determined that it would impose the same costs on domestic and international entities launching from the U.S. under an experimental permit, and thus would have a neutral trade impact.

*Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

*Executive Order 13132, Federalism*

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

*Environmental Analysis*

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances. Also, the FAA conducts environmental reviews at the time it issues permits.

*Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA has analyzed this Final Rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects**

*14 CFR Part 401*

Organization and functions (Government agencies), Space safety, Space transportation and exploration.

*14 CFR Part 404*

Administrative practice and procedure, Space safety, Space transportation and exploration.

*14 CFR Part 405*

Investigations, Penalties, Space safety, Space transportation and exploration.

*14 CFR Part 406*

Administrative practice and procedure, Space safety, Space transportation and exploration.

*14 CFR Part 413*

Confidential business information, Human space flight, Reporting and recordkeeping requirements, Space safety, Space transportation and exploration.

*14 CFR Part 415*

Aviation safety, Environmental protection, Space transportation and exploration.

*14 CFR Part 420*

Airspace, Human space flight, Space safety, Space transportation and exploration.

*14 CFR Part 431*

Aviation safety, Environmental protection, Investigations, Human space flight, Reporting and recordkeeping requirements, Rockets, Space safety, Space transportation and exploration.

*14 CFR Part 437*

Aviation safety, Airspace, Human space flight, Rockets, Space safety, Space transportation and exploration.

**IV. Regulatory Text**

■ For the reasons discussed above, the Federal Aviation Administration amends Chapter III of Title 14, Code of Federal Regulations, as follows:

## TITLE 14—AERONAUTICS AND SPACE

### CHAPTER III—COMMERCIAL SPACE TRANSPORTATION FEDERAL AVIATION ADMINISTRATION DEPARTMENT OF TRANSPORTATION

## PART 401—ORGANIZATION AND DEFINITIONS

■ 1. The authority citation for part 401 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 2. Revise § 401.3 to read as follows:

**§ 401.3 The Associate Administrator for Commercial Space Transportation.**

The Office is headed by an Associate Administrator to exercise the Secretary's authority to license or permit and otherwise regulate commercial space transportation and to discharge the Secretary's responsibility to encourage, facilitate, and promote commercial space transportation by the United States private sector.

■ 3. Amend § 401.5 as follows:

■ A. Add definitions for ''experimental permit'', ''validation'', and ''verification'' in alphabetical order to read as set forth below.

■ B. Revise the definitions for ''amateur rocket activities'', ''launch'', ''launch incident'', and ''reentry incident'' to read as set forth below.

**§ 401.5 Definitions.**

* * * * *

*Amateur rocket activities* means unmanned launch activities conducted at private sites involving rockets—

(1) Powered by a motor or motors having a total impulse of 200,000 pound-seconds or less;

(2) Powered by a motor or motors having a total burning or operating time of less than 15 seconds; and

(3) Having a ballistic coefficient—that is, gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

* * * * *

*Experimental permit* or *permit* means an authorization by the FAA to a person to launch or reenter a reusable suborbital rocket.

* * * * *

*Launch* means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes preparing a launch vehicle for flight at a launch site in the United States. Launch includes the flight of a launch vehicle and includes pre- and post-flight ground operations as follows:

(1) Beginning of launch.

(i) Under a license, launch begins with the arrival of a launch vehicle or payload at a U.S. launch site.

(ii) Under a permit, launch begins when any pre-flight ground operation at a U.S. launch site meets all of the following criteria:

(A) Is closely proximate in time to flight,

(B) Entails critical steps preparatory to initiating flight,

(C) Is unique to space launch, and

(D) Is inherently so hazardous as to warrant the FAA's regulatory oversight.

(2) End of launch.

(i) For launch of an orbital expendable launch vehicle (ELV), launch ends after the licensee's last exercise of control over its launch vehicle.

(ii) For launch of an orbital reusable launch vehicle (RLV) with a payload, launch ends after deployment of the payload. For any other orbital RLV, launch ends upon completion of the first sustained, steady-state orbit of an RLV at its intended location.

(iii) For a suborbital ELV or RLV launch, launch ends after reaching apogee if the flight includes a reentry, or otherwise after vehicle landing or impact on Earth, and after activities necessary to return the vehicle to a safe condition on the ground.

* * * * *

*Launch incident* means an unplanned event during the flight of a launch vehicle, other than a launch accident, involving a malfunction of a flight safety system or safety-critical system, or a failure of the licensee's or permittee's safety organization, design, or operations.

* * * * *

*Reentry incident* means any unplanned event occurring during the reentry of a reentry vehicle, other than a reentry accident, involving a malfunction of a reentry safety-critical system or failure of the licensee's or permittee's safety organization, procedures, or operations.

* * * * *

*Validation* means an evaluation to determine that each safety measure derived from a system safety process is correct, complete, consistent, unambiguous, verifiable, and technically feasible. Validation ensures that the right safety measure is implemented, and that the safety measure is well understood.

*Verification* means an evaluation to determine that safety measures derived from a system safety process are effective and have been properly implemented. Verification provides measurable evidence that a safety measure reduces risk to acceptable levels.

## PART 404—REGULATIONS AND LICENSING REQUIREMENTS

■ 4. The authority citation for part 404 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 5. Revise § 404.1 to read as follows:

**§ 404.1 Scope.**

This part establishes procedures for issuing regulations to implement 49 U.S.C. Subtitle IX, chapter 701, and for eliminating or waiving requirements for licensing or permitting of commercial space transportation activities under that statute.

■ 6. Revise § 404.17 to read as follows:

**§ 404.17 Additional rulemaking proceedings.**

The FAA may initiate other rulemaking proceedings, if necessary or desirable. For example, it may invite interested people to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

## PART 405—INVESTIGATIONS AND ENFORCEMENT

■ 7. The authority citation for part 405 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 8. Revise § 405.1 to read as follows:

**§ 405.1 Monitoring of licensed, permitted, and other activities.**

Each licensee or permittee must allow access by and cooperate with Federal officers or employees or other individuals authorized by the Associate Administrator to observe licensed facilities and activities, including launch sites and reentry sites, as well as manufacturing, production, testing, and training facilities, or assembly sites used by any contractor, licensee, or permittee to produce, assemble, or test a launch or reentry vehicle and to integrate a payload with its launch or reentry vehicle. Observations are conducted to monitor the activities of the licensee, permittee, or contractor at such time and to such extent as the Associate Administrator considers reasonable and necessary to determine compliance with the license or permit or to perform the Associate Administrator's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

■ 9. Revise § 405.3(a), (b), and (d) to read as follows:

**§ 405.3 Authority to modify, suspend or revoke.**

(a) The FAA may modify a license or permit issued under this chapter upon

application by the licensee or permittee or upon the FAA's own initiative, if the FAA finds that the modification is consistent with the requirements of the Act.

(b) The FAA may suspend or revoke any license or permit issued to such licensee or permittee under this chapter if the FAA finds that a licensee or permittee has substantially failed to comply with any requirement of the Act, any regulation issued under the Act, the terms and conditions of a license or permit, or any other applicable requirement; or that public health and safety, the safety of property, or any national security or foreign policy interest of the United States so require.

* * * * *

(d) Whenever the FAA takes any action under this section, the FAA immediately notifies the licensee or permittee in writing of the FAA's finding and the action, which the FAA has taken or proposes to take regarding such finding.

■ 10. Revise § 405.5 introductory text and paragraph (a) to read as follows:

**§ 405.5 Emergency orders.**

The Associate Administrator may immediately terminate, prohibit, or suspend a licensed or permitted launch, reentry, or operation of a launch or reentry site if the Associate Administrator determines that—

(a) The licensed or permitted launch, reentry, or operation of a launch or reentry site is detrimental to public health and safety, the safety of property, or any national security or foreign policy interest of the United States; and

* * * * *

## PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 11. The authority citation for part 406 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 12. Revise § 406.1 heading and paragraphs (a)(2) and (3), and add paragraphs (a)(4) and (5) to read as follows:

**§ 406.1 Hearings in license, permit, and payload actions.**

(a) * * *

(2) An owner or operator of a payload regarding any decision to prevent the launch or reentry of the payload;

(3) A licensee regarding any decision to suspend, modify, or revoke a license or to terminate, prohibit, or suspend any licensed activity;

(4) An applicant for a permit regarding an FAA decision to issue a permit with conditions or to deny the issuance of the permit; and

(5) A permittee regarding any decision to suspend, modify, or revoke a permit or to terminate, prohibit, or suspend any permitted activity.

* * * * *

■ 13. Revise § 406.3 heading and paragraph (a) to read as follows:

**§ 406.3 Submissions; oral presentation in license, permit, and payload actions.**

(a) The FAA will make decisions about license, permit, and payload actions under this subpart based on written submissions unless the administrative law judge requires an oral presentation.

* * * * *

■ 14. Revise § 406.5 heading to read as follows.

**§ 406.5 Administrative law judge's recommended decision in license, permit, and payload actions.**

* * * * *

■ 15. Revise § 406.9(a), (c) introductory text, and (f)(3) to read as follows:

**§ 406.9 Civil penalties.**

(a) *Civil penalty liability.* Under 49 U.S.C. 70115(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $100,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

* * * * *

(c) *Notice of proposed civil penalty.* A civil penalty action is initiated when the agency attorney advises a person, referred to as the respondent, of the charges or other reasons upon which the FAA bases the proposed action and allows the respondent to answer the charges and to be heard as to why the civil penalty should not be imposed. A notice of proposed civil penalty states the facts alleged; any requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act allegedly violated by the respondent; and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty the respondent may elect to proceed by one or more of the following:

* * * * *

(f) * * *

(3) The compromise order may not be used as evidence of a prior violation in any subsequent civil penalty action, license, or permit action.

* * * * *

■ 16. Revise § 406.127(a)(3)(ii) to read as follows:

**§ 406.127 Complaint and answer in civil penalty adjudications.**

(a) * * *

(3) * * *

(ii) Any requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act allegedly violated by the respondent.

* * * * *

## PART 413—LICENSE AND EXPERIMENTAL PERMIT APPLICATION PROCEDURES

■ 17. The authority citation for part 413 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 18. Revise § 413.1 to read as follows:

**§ 413.1 Scope of this part.**

(a) This part explains how to apply for a license or experimental permit. These procedures apply to all applications for issuing a license or permit, transferring a license, and renewing a license or permit.

(b) Use the following table to locate specific requirements:

| Subject | Part |
|---|---|
| (1) Obtaining a Launch License | 415 |
| (2) License to Operate a Launch Site | 420 |
| (3) Launch and Reentry of a Reusable Launch Vehicle (RLV) | 431 |
| (4) License to Operate a Reentry Site | 433 |
| (5) Reentry of a Reentry Vehicle other than a Reusable Launch Vehicle (RLV) | 435 |
| (6) Experimental Permits | 437 |

■ 19. Revise § 413.3 to read as follows:

**§ 413.3 Who must obtain a license or permit.**

(a) A person must obtain a license in accordance with this section, unless eligible for an experimental permit under paragraph (f) of this section.

(b) A person must obtain a license to—

(1) Launch a launch vehicle from the United States;

(2) Operate a launch site within the United States;

(3) Reenter a reentry vehicle in the United States; or

(4) Operate a reentry site within the United States.

(c) A person who is a U.S. citizen or an entity organized under the laws of

the United States or any State must obtain a license to—

(1) Launch a launch vehicle outside the United States;

(2) Operate a launch site outside the United States;

(3) Reenter a reentry vehicle outside the United States; or

(4) Operate a reentry site outside the United States.

(d) A foreign entity in which a United States citizen has a controlling interest must obtain a license to launch a launch vehicle from or to operate a launch site in—

(1) Any place that is outside the territory or territorial waters of any nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation has jurisdiction over the launch or the operation of the launch site; or

(2) The territory of any foreign nation, including its territorial waters, if there is an agreement in force between the United States and that foreign nation providing that the United States has jurisdiction over the launch or the operation of the launch site.

(e) A foreign entity in which a U.S. citizen has a controlling interest must obtain a license to reenter a reentry vehicle or to operate a reentry site in—

(1) Any place that is outside the territory or territorial waters of any nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation has jurisdiction over the reentry or the operation of the reentry site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States has jurisdiction over the reentry or the operation of the reentry site.

(f) A person, individual, or foreign entity otherwise requiring a license under this section may instead obtain an experimental permit to launch or reenter a reusable suborbital rocket under part 437 of this chapter.

■ 20. Revise § 413.5 to read as follows:

**§ 413.5 Pre-application consultation.**

A prospective applicant must consult with the FAA before submitting an application to discuss the application process and possible issues relevant to the FAA's licensing or permitting decision. Early consultation helps an applicant to identify possible regulatory issues at the planning stage when changes to an application or to proposed licensed or permitted activities are less likely to result in significant delay or costs to the applicant.

■ 21. Revise § 413.7(a), (b)(3), and (c)(1) and (3) to read as follows:

**§ 413.7 Application.**

(a) Form. An application must be in writing, in English and filed in duplicate with the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, Room 331, 800 Independence Avenue, SW., Washington, DC 20591. Attention: Application Review.

(b) * * *

(3) The type of license or permit for which the applicant is applying.

(c) * * *

(1) For a corporation: An officer or other individual authorized to act for the corporation in licensing or permitting matters.

* * * * *

(3) For a joint venture, association, or other entity: An officer or other individual authorized to act for the joint venture, association, or other entity in licensing or permitting matters.

* * * * *

■ 22. Revise §1A413.11 to read as follows:

**§ 413.11 Acceptance of an application.**

The FAA will initially screen an application to determine whether it is complete enough for the FAA to start its review. After completing the initial screening, the FAA will notify the applicant in writing of one of the following:

(a) The FAA accepts the application and will initiate the reviews required to make a decision about the license or permit; or

(b) The application is so incomplete or indefinite that the FAA cannot start to evaluate it. The FAA will reject it and notify the applicant, stating each reason for rejecting it and what action the applicant must take for the FAA to accept the application. The FAA may return a rejected application to the applicant or may hold it until the applicant takes the required actions.

■ 23. Revise § 413.13 to read as follows:

**§ 413.13 Complete application.**

The FAA's acceptance of an application does not mean it has determined that the application is complete. If, in addition to the information required by this chapter, the FAA requires other information necessary for a determination that public health and safety, safety of property, and national security and foreign policy interests of the United States are protected during the conduct of a licensed or permitted activity, an applicant must submit the additional information.

■ 24. Revise § 413.15 to read as follows:

**§ 413.15 Review period.**

(a) *Review period duration.* Unless otherwise specified in this chapter, the FAA reviews and makes a decision on an application within 180 days of receiving an accepted license application or within 120 days of receiving an accepted permit application.

(b) *Review period tolled.* If an accepted application does not provide sufficient information to continue or complete the reviews or evaluations required by this chapter for a licensing or permitting determination, or an issue exists that would affect a determination, the FAA notifies the applicant, in writing, and informs the applicant of any information required to complete the application. If the FAA cannot review an accepted application because of lack of information or for any other reason, the FAA will toll the 180-day or 120-day review period until the FAA receives the information it needs or the applicant resolves the issue.

(c) *Notice.* If the FAA does not make a decision within 120 days of receiving an accepted license application or within 90 days of receiving an accepted permit application, the FAA informs the applicant, in writing, of any outstanding information needed to complete the review, or of any issues that would affect the decision.

■ 25. Revise § 413.17 to read as follows:

**§ 413.17 Continuing accuracy of application; supplemental information; amendment.**

(a) An applicant must ensure the continuing accuracy and completeness of information furnished to the FAA as part of a pending license or permit application. If at any time the information an applicant provides is no longer accurate and complete in all material respects, the applicant must submit new or corrected information. As part of this submission, the applicant must recertify the accuracy and completeness of the application under § 413.7. If an applicant does not comply with any of the requirements set forth in this paragraph, the FAA can deny the license or permit application.

(b) An applicant may amend or supplement a license or permit application at any time before the FAA issues or transfers the license or permit.

(c) Willful false statements made in any application or document relating to an application, license, or permit are punishable by fine and imprisonment under section 1001 of Title 18, United

States Code, and by administrative sanctions in accordance with part 405 of this chapter.

■ 26. Revise § 413.19 to read as follows:

**§ 413.19 Issuing a license or permit.**

After the FAA completes its reviews and makes the decisions required by this chapter, the FAA issues a license or permit to the applicant.

■ 27. Revise § 413.21 (a), (b) introductory text, and (b)(1) to read as follows:

**§ 413.21 Denial of a license or permit application.**

(a) The FAA informs an applicant, in writing, if it denies an application and states the reasons for denial.

(b) If the FAA has denied an application, the applicant may either:

(1) Attempt to correct any deficiencies identified and ask the FAA to reconsider the revised application. The FAA has 60 days or the number of days remaining in the review period, whichever is greater, within which to reconsider the decision; or

* * * * *

■ 28. Revise § 413.23 to read as follows:

**§ 413.23 License or permit renewal.**

(a) *Eligibility.* A licensee or permittee may apply to renew its license or permit by submitting to the FAA a written application for renewal at least 90 days before the license expires or at least 60 days before the permit expires.

(b) *Application.* (1) A license or permit renewal application must satisfy the requirements set forth in this part and any other applicable part of this chapter.

(2) The application may incorporate by reference information provided as part of the application for the expiring license or permit, including any modifications to the license or permit.

(3) An applicant must describe any proposed changes in its conduct of licensed or permitted activities and provide any additional clarifying information required by the FAA.

(c) *Review of application.* The FAA reviews the application to determine whether to renew the license or permit for an additional term. The FAA may incorporate by reference any findings that are part of the record for the expiring license or permit.

(d) *Renewal of license or permit.* After the FAA finishes its reviews, the FAA issues an order modifying the expiration date of the license or permit. The FAA may impose additional or revised terms and conditions necessary to protect public health and safety and the safety of property and to protect U.S. national security and foreign policy interests.

(e) *Denial of license or permit renewal.* The FAA informs a licensee or permittee, in writing, if the FAA denies the application for renewal and states the reasons for denial. If the FAA denies an application, the licensee or permittee may follow the procedures of § 413.21 of this part.

## PART 415—LAUNCH LICENSE

■ 29. The authority citation for part 415 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 30. Revise § 415.1 to read as follows:

**§ 415.1 Scope.**

This part prescribes requirements for obtaining a license to launch a launch vehicle, other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are in part 413 of this subchapter.

## PART 420—LICENSE TO OPERATE A LAUNCH SITE

■ 31. The authority citation for part 420 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 32. Revise the definition of ''public'' in § 420.5 to read as follows:

**§ 420.5 Definitions.**

* * * * *

*Public* means people and property that are not involved in supporting a licensed or permitted launch, and includes those people and property that may be located within the boundary of a launch site, such as visitors, any individual providing goods or services not related to launch processing or flight, and any other launch operator and its personnel.

* * * * *

■ 33. Revise § 420.25(b) to read as follows:

**§ 420.25 Launch site location review—risk analysis.**

* * * * *

(b) For licensed launches, the FAA will not approve the location of the proposed launch point if the estimated expected casualty exceeds $30 \times 10^{-6}$.

■ 34. Add § 420.30 to read as follows:

**§ 420.30 Launch site location review for permitted launch vehicles.**

If an applicant plans to use its proposed launch site solely for launches conducted under an experimental permit, the FAA will approve a launch site location if the FAA has approved an operating area under part 437 for launches from that site.

## PART 431—LICENSE FOR LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

■ 35. The authority citation for part 431 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 36. Revise § 431.35(d)(7) to read as follows:

**§ 431.35 Acceptable reusable launch vehicle mission risk.**

* * * * *

(d) * * *

(7) Provide data that verifies the risk elimination and mitigation measures resulting from the applicant's system safety analyses required by paragraph (c) of this section; and

* * * * *

■ 37. Add part 437 to read as follows:

## PART 437—EXPERIMENTAL PERMITS

**Subpart A—General Information**

Sec.
437.1 Scope and organization of this part.
437.3 Definitions.
437.5 Eligibility for an experimental permit.
437.7 Scope of an experimental permit.
437.9 Issuance of an experimental permit.
437.11 Duration of an experimental permit.
437.13 Additional experimental permit terms and conditions.
437.15 Transfer of an experimental permit.
437.17 Rights not conferred by an experimental permit.

**Subpart B—Requirements to Obtain an Experimental Permit**

437.21 General.

**Program Description**

437.23 Program description.

**Flight Test Plan**

437.25 Flight test plan.

**Operational Safety Documentation**

437.27 Pre-flight and post-flight operations.
437.29 Hazard analysis.
437.31 Verification of operating area containment and key flight-safety event limitations.
437.33 Landing and impact locations.
437.35 Agreements.
437.37 Tracking.
437.39 Flight rules.
437.41 Mishap response plan.

**Subpart C—Safety Requirements**

437.51 Rest rules for vehicle safety operations personnel.
437.53 Pre-flight and post-flight operations.
437.55 Hazard analysis.
437.57 Operating area containment.
437.59 Key flight-safety event limitations.
437.61 Landing and impact locations.
437.63 Agreements with other entities involved in a launch or reentry.

437.65 Collision avoidance analysis.
437.67 Tracking a reusable suborbital rocket.
437.69 Communications.
437.71 Flight rules.
437.73 Anomaly recording, reporting and implementation of corrective actions.
437.75 Mishap reporting, responding, and investigating.
437.77 Additional safety requirements.

**Subpart D—Terms and Conditions of an Experimental Permit**

437.81 Public safety responsibility.
437.83 Compliance with experimental permit.
437.85 Allowable design changes; modification of an experimental permit.
437.87 Records.
437.89 Pre-flight reporting.
437.91 For-hire prohibition.
437.93 Compliance monitoring.
437.95 Inspection of additional reusable suborbital rockets.

**Authority:** 49 U.S.C. 70101–70102.

## Subpart A—General Information

### § 437.1 Scope and organization of this part.

(a) This part prescribes requirements for obtaining an experimental permit. It also prescribes post-permitting requirements with which a permittee must comply to maintain its permit. Part 413 of this subchapter contains procedures for applying for an experimental permit.

(b) Subpart A contains general information about an experimental permit. Subpart B contains requirements to obtain an experimental permit. Subpart C contains the safety requirements with which a permittee must comply while conducting permitted activities. Subpart D contains terms and conditions of an experimental permit.

### § 437.3 Definitions.

*Anomaly* means a problem that occurs during verification or operation of a system, subsystem, process, facility, or support equipment.

*Envelope expansion* means any portion of a flight where planned operations will subject a reusable suborbital rocket to the effects of altitude, velocity, acceleration, or burn duration that exceed a level or duration successfully verified during an earlier flight.

*Exclusion area* means an area, within an operating area, that a reusable suborbital rocket's instantaneous impact point may not traverse.

*Key flight-safety event* means a permitted flight activity that has an increased likelihood of causing a launch accident compared with other portions of flight.

*Operating area* means a three-dimensional region where permitted flights may take place.

*Permitted vehicle* means a reusable suborbital rocket operated by a launch or reentry operator under an experimental permit.

*Reentry impact point* means the location of a reusable suborbital rocket's instantaneous impact point during its unpowered exoatmospheric suborbital flight.

### § 437.5 Eligibility for an experimental permit.

The FAA will issue an experimental permit to a person to launch or reenter a reusable suborbital rocket only for—

(a) Research and development to test new design concepts, new equipment, or new operating techniques;

(b) A showing of compliance with requirements for obtaining a license under this subchapter; or

(c) Crew training before obtaining a license for a launch or reentry using the design of the rocket for which the permit would be issued.

### § 437.7 Scope of an experimental permit.

An experimental permit authorizes launch or reentry of a reusable suborbital rocket. The authorization includes pre- and post-flight ground operations as defined in this section.

(a) A pre-flight ground operation includes each operation that—

(1) Takes place at a U.S. launch site; and

(2) Meets the following criteria:

(i) Is closely proximate in time to flight,

(ii) Entails critical steps preparatory to initiating flight,

(iii) Is unique to space launch, and

(iv) Is inherently so hazardous as to warrant the FAA's regulatory oversight.

(b) A post-flight ground operation includes each operation necessary to return the reusable suborbital rocket to a safe condition after it lands or impacts.

### § 437.9 Issuance of an experimental permit.

The FAA issues an experimental permit authorizing an unlimited number of launches or reentries for a suborbital rocket design for the uses described in § 437.5.

### § 437.11 Duration of an experimental permit.

An experimental permit lasts for one year from the date it is issued. A permittee may apply to renew a permit yearly under part 413 of this subchapter.

### § 437.13 Additional experimental permit terms and conditions.

The FAA may modify an experimental permit at any time by modifying or adding permit terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, ch. 701.

### § 437.15 Transfer of an experimental permit.

An experimental permit is not transferable.

### § 437.17 Rights not conferred by an experimental permit.

Issuance of an experimental permit does not relieve a permittee of its obligation to comply with any requirement of law that applies to its activities.

## Subpart B—Requirements To Obtain an Experimental Permit

### § 437.21 General.

To obtain an experimental permit an applicant must make the demonstrations and provide the information required by this section.

(a) *This subpart.* An applicant must provide a program description, a flight test plan, and operational safety documentation as required by this subpart.

(b) *Other regulations.* (1) *Environmental.* An applicant must provide enough information for the FAA to analyze the environmental impacts associated with proposed reusable suborbital rocket launches or reentries. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508.

(2) *Financial responsibility.* An applicant must provide the information required by part 3 of appendix A of part 440 for the FAA to conduct a maximum probable loss analysis.

(3) *Human space flight.* An applicant proposing launch or reentry with flight crew or a space flight participant on board a reusable suborbital rocket must demonstrate compliance with §§ 460.5, 460.7, 460.11, 460.13, 460.15, 460.17, 460.51 and 460.53 of this subchapter.

(c) *Use of a safety approval.* If an applicant proposes to use any reusable suborbital rocket, safety system, process, service, or personnel for which the FAA has issued a safety approval under part 414 of this subchapter, the FAA will not reevaluate that safety element to the extent its use is within its approved

envelope. As part of the application process, the FAA will evaluate the integration of that safety element into vehicle systems or operations.

(d) *Inspection before issuing a permit.* Before the FAA issues an experimental permit, an applicant must make each reusable suborbital rocket planned to be flown available to the FAA for inspection. The FAA will determine whether each reusable suborbital rocket is built as represented in the application.

(e) *Other requirements.* The FAA may require additional analyses, information, or agreements if necessary to protect public health and safety, safety of property, and national security and foreign policy interests of the United States.

## Program Description

### § 437.23 Program description.

(a) An applicant must provide—

(1) Dimensioned three-view drawings or photographs of the reusable suborbital rocket; and

(2) Gross liftoff weight and thrust profile of the reusable suborbital rocket.

(b) An applicant must describe—

(1) All reusable suborbital rocket systems, including any structural, flight control, thermal, pneumatic, hydraulic, propulsion, electrical, environmental control, software and computing systems, avionics, and guidance systems used in the reusable suborbital rocket;

(2) The types and quantities of all propellants used in the reusable suborbital rocket;

(3) The types and quantities of any hazardous materials used in the reusable suborbital rocket;

(4) The purpose for which a reusable suborbital rocket is to be flown; and

(5) Each payload or payload class planned to be flown.

(c) An applicant must identify any foreign ownership of the applicant as follows:

(1) For a sole proprietorship or partnership, identify all foreign ownership,

(2) For a corporation, identify any foreign ownership interests of 10% or more, and

(3) For a joint venture, association, or other entity, identify any participating foreign entities.

## Flight Test Plan

### § 437.25 Flight test plan.

**An applicant must—**

(a) Describe any flight test program, including estimated number of flights and key flight-safety events.

(b) Identify and describe the geographic coordinates of the boundaries of one or more proposed operating areas where it plans to perform its flights and that satisfy § 437.57(b) of subpart C. The FAA may designate one or more exclusion areas in accordance with § 437.57(c) of subpart C.

(c) For each operating area, provide the planned maximum altitude of the reusable suborbital rocket.

## Operational Safety Documentation

### § 437.27 Pre-flight and post-flight operations.

An applicant must demonstrate how it will meet the requirements of § 437.53(a) and (b) to establish a safety clear zone and verify that the public is outside that zone before and during any hazardous operation.

### § 437.29 Hazard analysis.

(a) An applicant must perform a hazard analysis that complies with § 437.55(a).

(b) An applicant must provide to the FAA all the results of each step of the hazard analysis required by paragraph (a) of this section.

### § 437.31 Verification of operating area containment and key flight-safety event limitations.

(a) An applicant must identify, describe, and provide verification evidence of the methods and systems used to meet the requirement of § 437.57(a) to contain its reusable suborbital rocket's instantaneous impact point within an operating area and outside any exclusion area. The description must include, at a minimum—

(1) Proof of physical limits on the ability of the reusable suborbital rocket to leave the operating area; or

(2) Abort procedures and other safety measures derived from a system safety engineering process.

(b) An applicant must identify, describe, and provide verification evidence of the methods and systems used to meet the requirements of § 437.59 to conduct any key flight-safety event so that the reusable suborbital rocket's instantaneous impact point, including its expected dispersions, is over unpopulated or sparsely populated areas, and to conduct each reusable suborbital rocket flight so that the reentry impact point does not loiter over a populated area.

### § 437.33 Landing and impact locations.

An applicant must demonstrate that each location for nominal landing or any contingency abort landing of the reusable suborbital rocket, and each location for any nominal or contingency impact or landing of a component of that rocket, satisfies § 437.61.

### § 437.35 Agreements.

An applicant must enter into the agreements required by § 437.63, and provide a copy to the FAA.

### § 437.37 Tracking.

An applicant must identify and describe each method or system used to meet the tracking requirements of § 437.67.

### § 437.39 Flight rules.

An applicant must provide flight rules as required by § 437.71.

### § 437.41 Mishap response plan.

An applicant must provide a mishap response plan that meets the requirements of § 437.75(b).

## Subpart C—Safety Requirements

### § 437.51 Rest rules for vehicle safety operations personnel.

A permittee must ensure that all vehicle safety operations personnel adhere to the work and rest standards in this section during permitted activities.

(a) No vehicle safety operations personnel may work more than:

(1) 12 consecutive hours,

(2) 60 hours in the 7 days preceding a permitted activity, or

(3) 14 consecutive work days.

(b) All vehicle safety operations personnel must have at least 8 hours of rest after 12 hours of work.

(c) All vehicle safety operations personnel must receive a minimum 48-hour rest period after 5 consecutive days of 12-hour shifts.

### § 437.53 Pre-flight and post-flight operations.

A permittee must protect the public from adverse effects of hazardous operations and systems in preparing a reusable suborbital rocket for flight at a launch site in the United States and returning the reusable suborbital rocket and any support equipment to a safe condition after flight. At a minimum, a permittee must—

(a) Establish a safety clear zone that will contain the adverse effects of each operation involving a hazard; and

(b) Verify that the public is outside of the safety clear zone before and during any hazardous operation.

### § 437.55 Hazard analysis.

(a) A permittee must identify and characterize each of the hazards and assess the risk to public health and safety and the safety of property resulting from each permitted flight. This hazard analysis must—

(1) Identify and describe hazards, including but not limited to each of those that result from—

(i) Component, subsystem, or system failures or faults;

(ii) Software errors;

(iii) Environmental conditions;

(iv) Human errors;

(v) Design inadequacies; or

(vi) Procedural deficiencies.

(2) Determine the likelihood of occurrence and consequence for each hazard before risk elimination or mitigation.

(3) Ensure that the likelihood and consequence of each hazard meet the following criteria through risk elimination and mitigation measures:

(i) The likelihood of any hazardous condition that may cause death or serious injury to the public must be extremely remote.

(ii) The likelihood of any hazardous condition that may cause major property damage to the public, major safety-critical system damage or reduced capability, a significant reduction in safety margins, or a significant increase in crew workload must be remote.

(4) Identify and describe the risk elimination and mitigation measures required to satisfy paragraph (a)(3) of this section. The measures must include one or more of the following:

(i) Designing for minimum risk,

(ii) Incorporating safety devices,

(iii) Providing warning devices, or

(iv) Implementing procedures and training.

(5) Demonstrate that the risk elimination and mitigation measures achieve the risk levels of paragraph (a)(3)(i) of this section through validation and verification. Verification includes:

(i) Test data,

(ii) Inspection results, or

(iii) Analysis.

(b) A permittee must carry out the risk elimination and mitigation measures derived from its hazard analysis.

(c) A permittee must ensure the continued accuracy and validity of its hazard analysis throughout the term of its permit.

**§ 437.57 Operating area containment.**

(a) During each permitted flight, a permittee must contain its reusable suborbital rocket's instantaneous impact point within an operating area determined in accordance with paragraph (b) and outside any exclusion area defined by the FAA in accordance with paragraph (c) of this section.

(b) An operating area—

(1) Must be large enough to contain each planned trajectory and all expected vehicle dispersions;

(2) Must contain enough unpopulated or sparsely populated area to perform key flight-safety events as required by § 437.59;

(3) May not contain or be adjacent to a densely populated area or large concentrations of members of the public; and

(4) May not contain or be adjacent to significant automobile traffic, railway traffic, or waterborne vessel traffic.

(c) The FAA may prohibit a reusable suborbital rocket's instantaneous impact point from traversing certain areas within an operating area by designating one or more areas as exclusion areas, if necessary to protect public health and safety, safety of property, or foreign policy or national security interests of the United States. An exclusion area may be confined to a specific phase of flight.

**§ 437.59 Key flight-safety event limitations.**

(a) A permittee must conduct any key flight-safety event so that the reusable suborbital rocket's instantaneous impact point, including its expected dispersion, is over an unpopulated or sparsely populated area. At a minimum, a key flight-safety event includes:

(1) Ignition of any primary rocket engine,

(2) Any staging event, or

(3) Any envelope expansion.

(b) A permittee must conduct each reusable suborbital rocket flight so that the reentry impact point does not loiter over a populated area.

**§ 437.61 Landing and impact locations.**

For a nominal or any contingency abort landing of a reusable suborbital rocket, or for any nominal or contingency impact or landing of a component of that rocket, a permittee must use a location that—

(a) Is big enough to contain an impact, including debris dispersion upon impact; and

(b) At the time of landing or impact, does not contain any members of the public.

**§ 437.63 Agreements with other entities involved in a launch or reentry.**

A permittee must comply with the agreements required by this section.

(a) A permittee must have an agreement in writing with a Federal launch range operator, a licensed launch site operator, or any other party that provides access to or use of property and services required to support the safe launch or reentry under a permit.

(b) Unless otherwise addressed in agreements with a licensed launch site operator or a Federal launch range, a permittee must have an agreement in writing with the following:

(1) For overflight of navigable water, a written agreement between the applicant and the local United States Coast Guard district to establish procedures for issuing a Notice to Mariners before a permitted flight, and

(2) A written agreement between the applicant and responsible Air Traffic Control authority having jurisdiction over the airspace through which a permitted launch or reentry is to take place, for measures necessary to ensure the safety of aircraft. The agreement must, at a minimum, demonstrate satisfaction of §§ 437.69(a) and 437.71(d).

**§ 437.65 Collision avoidance analysis.**

(a) For a permitted flight with a planned maximum altitude greater than 150 kilometers, a permittee must obtain a collision avoidance analysis from United States Strategic Command.

(b) The collision avoidance analysis must establish each period during which a permittee may not initiate flight to ensure that a permitted vehicle and any jettisoned components do not pass closer than 200 kilometers to a manned or mannable orbital object. A distance of less than 200 kilometers may be used if the distance provides an equivalent level of safety, and if the distance accounts for all uncertainties in the analysis.

**§ 437.67 Tracking a reusable suborbital rocket.**

A permittee must—

(a) During permitted flight, measure in real time the position and velocity of its reusable suborbital rocket; and

(b) Provide position and velocity data to the FAA for post-flight use.

**§ 437.69 Communications.**

(a) A permittee must be in communication with Air Traffic Control during all phases of flight.

(b) A permittee must record communications affecting the safety of the flight.

**§ 437.71 Flight rules.**

(a) Before initiating rocket-powered flight, a permittee must confirm that all systems and operations necessary to ensure that safety measures derived from §§ 437.55, 437.57, 437.59, 437.61, 437.63, 437.65, 437.67, and 437.69 are within acceptable limits.

(b) During all phases of flight, a permittee must—

(1) Follow flight rules that ensure compliance with §§ 437.55, 437.57, 437.59, and 437.61; and

(2) Abort the flight if it would endanger the public.

(c) A permittee may not operate a reusable suborbital rocket in a careless

or reckless manner that would endanger any member of the public during any phase of flight.

(d) A permittee may not operate a reusable suborbital rocket in areas designated in a Notice to Airmen under § 91.137, § 91.138, § 91.141, or § 91.145 of this title, unless authorized by:

(1) Air Traffic Control; or

(2) A Flight Standards Certificate of Waiver or Authorization.

(e) For any phase of flight where a permittee operates a reusable suborbital rocket like an aircraft in the National Airspace System, a permittee must comply with the provisions of part 91 of this title specified in an experimental permit issued under this part.

**§ 437.73 Anomaly recording, reporting and implementation of corrective actions.**

(a) A permittee must record each anomaly that affects a safety-critical system, subsystem, process, facility, or support equipment.

(b) A permittee must identify all root causes of each anomaly, and implement all corrective actions for each anomaly.

(c) A permittee must report to the FAA any anomaly of any system that is necessary for complying with §§ 437.55(a)(3), 437.57, and 437.59, and must report the corrective action for each reported anomaly.

(d) A permittee must implement each corrective action before the next flight.

**§ 437.75 Mishap reporting, responding, and investigating.**

A permittee must report, respond to, and investigate mishaps that occur during permitted activities, in accordance with this section.

(a) Reporting requirements. A permittee must—

(1) Immediately notify the FAA Washington Operations Center if there is a launch or reentry accident or incident or a mishap that involves a fatality or serious injury, as defined in 49 CFR 830.2;

(2) Notify within 24 hours the FAA's Office of Commercial Space Transportation if there is a mishap that does not involve a fatality or serious injury, as defined in 49 CFR 830.2; and

(3) Submit within 5 days of the event a written preliminary report to the FAA's Office of Commercial Space Transportation if there is a launch or reentry accident or incident during a permitted flight. The report must identify the event as a launch or reentry accident or incident, and must include:

(i) The date and time of occurrence,

(ii) A description of the event and sequence of events leading to the launch or reentry accident, or launch or reentry incident, to the extent known,

(iii) The intended and actual location of launch or reentry, including landing or impact on Earth,

(iv) A description of any payload,

(v) The number and general description of any fatalities and injuries,

(vi) Property damage, if any, and an estimate of its value,

(vii) A description of any hazardous materials involved in the event, whether on the reusable suborbital rocket or on the ground,

(viii) Action taken by any person to contain the consequences of the event, and

(ix) Weather conditions at the time of the event.

(b) Response requirements. A permittee must—

(1) Immediately—

(i) Ensure the consequences of a mishap are contained and minimized; and

(ii) Ensure data and physical evidence are preserved.

(2) Report to and cooperate with FAA and National Transportation Safety Board (NTSB) investigations and designate one or more points of contact for the FAA or NTSB; and

(3) Identify and adopt preventive measures for avoiding a recurrence of the event.

(c) Investigation requirements. A permittee must—

(1) Investigate the root cause of an event described in paragraph (a) of this section;

(2) Report investigation results to the FAA upon completion; and

(3) Identify responsibilities, including reporting responsibilities, for personnel assigned to conduct investigations and for any unrelated persons that the permittee retains to conduct or participate in investigations.

**§ 437.77 Additional safety requirements.**

The FAA may impose additional safety requirements on an applicant or permittee proposing an activity with a hazard not otherwise addressed in this part. This may include a toxic hazard or the use of solid propellants. The FAA may also require the permittee to conduct additional analyses of the cause of any anomaly and corrective actions.

## Subpart D—Terms and Conditions of an Experimental Permit

**§ 437.81 Public safety responsibility.**

A permittee must ensure that a launch or reentry conducted under an experimental permit is safe, and must protect public health and safety and the safety of property.

**§ 437.83 Compliance with experimental permit.**

A permittee must conduct any launch or reentry under an experimental permit in accordance with representations made in its permit application, with subparts C and D of this part, and with terms and conditions contained in the permit.

**§ 437.85 Allowable design changes; modification of an experimental permit.**

(a) The FAA will identify in the experimental permit the type of changes that the permittee may make to the reusable suborbital rocket design without invalidating the permit.

(b) Except for design changes made under paragraph (a) of this section, a permittee must ask the FAA to modify the experimental permit if—

(1) It proposes to conduct permitted activities in a manner not authorized by the permit; or

(2) Any representation in its permit application that is material to public health and safety or the safety of property is no longer accurate or complete.

(c) A permittee must prepare an application to modify an experimental permit and submit it in accordance with part 413 of this subchapter. If requested during the application process, the FAA may approve an alternate method for requesting permit modifications. The permittee must indicate any part of its permit that would be changed or affected by a proposed modification.

(d) When a permittee proposes a modification, the FAA reviews the determinations made on the experimental permit to decide whether they remain valid.

(e) When the FAA approves a modification, it issues the permittee either a written approval or a permit order modifying the permit if a stated term or condition of the permit is changed, added, or deleted. An approval has the full force and effect of a permit order and is part of the permit record.

**§ 437.87 Records.**

(a) Except as required by paragraph (b) of this section, a permittee must maintain for 3 years all records, data, and other material necessary to verify that a permittee conducted its launch or reentry in accordance with its permit.

(b) If there is a launch or reentry accident or incident, a permittee must preserve all records related to the event. A permittee must keep the records until after any Federal investigation and the FAA advises the permittee that it may dispose of them.

(c) A permittee must make all records that it must maintain under this section

available to Federal officials for inspection and copying.

**§ 437.89 Pre-flight reporting.**

(a) Not later than 30 days before each flight or series of flights conducted under an experimental permit, a permittee must provide the FAA with the following information:

(1) Any payload to be flown, including any payload operations during the flight,

(2) When the flight or series of flights are planned,

(3) The operating area for each flight, and

(4) The planned maximum altitude for each flight.

(b) Not later than 15 days before each permitted flight planned to reach greater than 150 km altitude, a permittee must provide the FAA its planned trajectory for a collision avoidance analysis.

**§ 437.91 For-hire prohibition.**

No permittee may carry any property or human being for compensation or hire on a reusable suborbital rocket.

**§ 437.93 Compliance monitoring.**

A permittee must allow access by, and cooperate with, federal officers or employees or other individuals authorized by the FAA to observe any activities of the permittee, or of its contractors or subcontractors, associated with the conduct of permitted activities.

**§ 437.95 Inspection of additional reusable suborbital rockets.**

A permittee may launch or reenter additional reusable suborbital rockets of the same design under the permit after the FAA inspects each additional reusable suborbital rocket.

Issued in Washington, DC, on March 23, 2007.

**Marion C. Blakey,**

*Administrator.*

[FR Doc. E7–6194 Filed 4–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD09–07–009]**

**RIN 1625–AA08**

## Safety of Life on Navigable Waters; Great Lakes Annual Marine Events

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Tulip Time Fireworks and Water Ski Show special local regulation on Lake Macatawa in Holland, Michigan on May 4, 2007. This action is necessary to protect the public from the hazards associated with fireworks displays. During the enforcement period no person or vessel may enter the regulated area without the permission of the Captain of the Port or his designated representative.

**DATES:** Enforced from 7 p.m. through 11 p.m. on May 4, 2007. In the event of inclement weather on May 4, 2007 this regulation will be enforced from 7 p.m. through 11 p.m. on May 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:** We are publishing this document to provide notice that under the provisions of 33 CFR 100.901, Group Grand Haven, MI: Tulip Time Fireworks and Water Ski Show will be enforced on May 4, 2007 from 7 p.m. through 11 p.m. In case of inclement weather on May 4, 2007 this regulation will be enforced on May 5, 2007 from 7 p.m. through 11 p.m. The regulated area consists of all waters and adjacent shoreline of Lake Macatawa, Holland Harbor, east of a north-south line, from shore to shore, at position 086°08′W (NAD 1983).

In order to ensure the safety of spectators and transiting vessels, this regulated area will be in effect for the duration of the event. In the event that this regulated area affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the regulated area.

Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Dated: March 29, 2007.

**B.C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.*

[FR Doc. E7–6362 Filed 4–5–07; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–07–010]**

**RIN 1625–AA00**

## Safety Zones; Annual Fireworks Events in the Captain of the Port Milwaukee Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Rockets for Schools safety zone on Lake Michigan near Sheboygan, WI on May 5, 2007. This action is necessary to protect the public from the hazards associated with rocket launches. During the enforcement period no person or vessel may enter the safety zone without the permission of the Captain of the Port or his designated representative.

**DATES:** The zone will be enforced from 9 a.m. through 4 p.m. on May 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:** We are publishing this document to provide notice that under the provisions of 33 CFR 165.909(a)(12), the Rockets for Schools safety zone on Lake Michigan near Sheboygan, WI will be enforced on May 5, 2007 from 9 a.m. through 4 p.m. The safety zone consists of all waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in position 43°44′56″ N, 087°42′06″ W (NAD 83). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

In order to ensure the safety of spectators and transiting vessels, this safety zone will be in effect for the duration of the event. In the event that this safety zone effects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone.

Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM. The Coast

Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Dated: March 29, 2007.

**B.C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.*

[FR Doc. E7–6424 Filed 4–5–07; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[EPA–R01–OAR–2007–0136; A–1–FRL–8295–6]**

## Approval and Promulgation of State Plans for Designated Pollutants and Facilities; Rhode Island; Negative Declaration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a Section 111(d) and 129 negative declaration submitted by the State of Rhode Island on November 5, 2006. This negative declaration adequately certifies that there are no existing ''other solid waste incineration'' (OSWI) units located within the boundaries of the State of Rhode Island. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective June 5, 2007, unless EPA receives adverse comments by May 7, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2007–0136 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: cohen.ian@epa.gov*
3. *Fax:* (617) 918–0655.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2007–0136, Dan Brown, Chief, Air Permits, Toxics, and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114–2023.
5. *Hand Delivery or Courier.* Deliver your comments to: Dan Brown, Chief, Air Permits, Toxics, and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2007–0136. 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 through *http://www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ian D. Cohen, Air Permits, Toxics, and Indoor Air Programs, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street (CAP), Boston, MA 02114–2023, telephone number (617) 918–1655, fax number (617) 918–0655, e-mail *cohen.ian@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*How Can I Get Copies of This Document and Other Related Information?*

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at *http://www.regulations.gov,* and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

### II. Rulemaking Information

Organization of this document. The following outline is provided to aid in locating information in this preamble.

A. Background and Purpose
B. When did the Requirements first Become Known?
C. What is the definition of an OSWI?
D. When did Rhode Island submit its negative declaration?

*A. Background and Purpose*

Section 129 of the Clean Air Act requires EPA to publish rules regulating emissions from several classes of solid waste incinerators. Under Section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR Part 60 Subpart B which require states to submit plans to control emissions of specific pollutants from designated facilities. As federal rules covering each category of solid waste incinerator are promulgated, a State must either submit a plan or accept delegation of a federal plan. If a state does not have a designated facility within its boundaries, the state may submit a negative declaration in lieu of a control plan.

*B. When did the requirements first become known?*

On December 9, 2004, EPA proposed emissions guidelines for other solid waste incinerators (OSWI) units. This action enabled EPA to list OSWI units as designated facilities. By proposing these guidelines, EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants. These guidelines were published as a final rule on December 16, 2005 (70 FR 74870) and codified at 40 CFR 60, subpart EEEE.

*C. What is the definition of an OSWI?*

Forty CFR 60.2977 defines an OSWI as either a very small municipal waste combustion unit or an institutional waste unit. A very small municipal waste unit is a unit which combusts less than 35 tons per day of municipal solid waste or refuse derived fuel. An institutional waste unit is a unit which serves an organization having a governmental, educational, civic, or religious purpose. Units which meet certain criteria are not affected by this subpart. These criteria are listed in 40 CFR 60.2887.

*D. When did Rhode Island submit its negative declaration?*

On November 8, 2006, the Rhode Island Department of Environmental Management (RI DEM) submitted a letter certifying that there are no existing OSWI units subject to 40 CFR Part 60 Subpart B. Section 111(d) of the Clean Air Act and 40 CRF 62.06 says that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. Today's action amends 40 CFR Part 62 to include this negative declaration.

## III. Final Action

EPA is approving the negative declaration of air emissions from OSWI submitted by the State of Rhode Island.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 5, 2007 without further notice unless the Agency receives relevant adverse comments by May 7, 2007.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 5, 2007 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. Statutory and Executive Order Reviews

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

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

In reviewing Section 111(d) submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state action for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a state plan that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 2007. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless

the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Solid Waste Incinerators, Waste treatment and disposal.

Dated: March 27, 2007.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

■ 40 CFR part 62 is amended as follows:

## PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

## Subpart OO—Rhode Island

■ 2. Subpart OO is amended by adding a new § 62.9995 and a new undesignated center heading to read as follows:

**Air Emissions From Existing Other Solid Waste Incineration Units**

**§ 62. 9995 Identification of Plan-Negative Declaration.**

On November 5, 2006, the Rhode Island Department of Environmental Management submitted a letter certifying that there are no existing other solid waste incineration units in the state subject to the emission guidelines under part 60, subpart EEEE of this chapter.

[FR Doc. E7–6460 Filed 4–5–07; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

**[EPA–R05–RCRA–2007–0213; SW–FRL–8294–8]**

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a petition to exclude (or ''delist'') wastewater treatment plant sludges from conversion coating on aluminum generated by AutoAlliance International, Inc. (AAI), a Ford/Mazda joint venture company in Flat Rock, Michigan, from the list of hazardous wastes.

Today's action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The exclusion was proposed on March 7, 2002 as part of an expedited process to evaluate this waste under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting.

**DATES:** This rule is effective on April 6, 2007.

**ADDRESSES:** EPA has established an electronic docket for this action under Docket ID No. EPA–R05–RCRA–2007–0213. The electronic docket contains all relevant documents created after this action was proposed as well as a selection of pertinent documents from the original paper docket for the proposed rule, Docket ID No. R5–MIECOS–01. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. All documents in the electronic docket are listed on the *http://www.regulations.gov* Web site. Publicly available materials from Docket ID No. EPA–R05–RCRA–2007–0213 are available either electronically through *http://www.regulations.gov* or in hard copy. Materials from the original paper docket, Docket ID No. R5–MIECOS–01, are also available in hard copy. You can view and copy materials from both dockets at the Records Center, 7th floor, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Todd Ramaly at (312) 353–9317 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Todd Ramaly, Waste, Pesticides, and Toxics Division, (Mail Code: DU–7J), EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604; *telephone number:* (312) 353–9317; *fax number:* (312) 353–4788; *e-mail address: ramaly.todd@epa.gov*.

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

I. Background
  A. What is a delisting petition?
  B. What regulations allow a waste to be delisted?
  C. What waste did AAI petition to delist?
II. The Expedited Process for Delisting
  A. Why was the expedited process developed for this waste?
  B. What is the expedited process to delist F019?
III. EPA's Evaluation of This Petition
  A. What information was submitted in support of this petition?
  B. How did EPA evaluate the information submitted?
IV. Public Comments Received on the Proposed Exclusion
  A. Who submitted comments on the proposed rule?
  B. Comments received and responses from EPA
V. Final Rule Granting This Petition
  A. What decision is EPA finalizing?
  B. What are the terms of this exclusion?
  C. When is the delisting effective?
  D. How does this action affect the states?
VI. Statutory and Executive Order Reviews

### I. Background

*A. What is a delisting petition?*

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40 Code of Federal Regulations (40 CFR) 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See 40 CFR 260.22, 42 United States Code (U.S.C.) 6921(f) and the background documents for a listed waste.

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes and to ensure that future generated wastes meet the conditions set.

*B. What regulations allow a waste to be delisted?*

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a ''generator specific'' basis.

*C. What waste did AAI petition to delist?*

AAI petitioned to exclude wastewater treatment sludges resulting from a zinc phosphating conversion coating process on car and truck bodies, which have aluminum components. When treated, the wastewater from the conversion coating on aluminum results in a listed waste, F019. The wastewater from the phosphating process entering the wastewater treatment plant combines with wastewaters from other operations at the plant including cleaning and rinsing operations, electrocoating processes, vehicle leak testing, and floor scrubbing. Wastewaters include alkaline cleaners, surfactants, organic detergents, rinse conditioners from cleaning operations and overflows and rinse water from electrocoating. All sludge from the treatment of this wastewater is regulated as RCRA hazardous waste F019.

## II. The Expedited Process for Delisting

*A. Why was the expedited process developed for this waste?*

Automobile manufacturers are adding aluminum components to automobile and light truck bodies. When aluminum is conversion coated in a zinc phosphating process in automobile assembly plants, the resulting wastewater treatment sludge must be managed as EPA hazardous waste F019. F019 wastes generated at other auto assembly plants using the same zinc phosphating and wastewater treatment processes have been shown to be nonhazardous.

This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and for EPA to be more efficient in evaluating them. Efficiency may be gained and time saved by using a standardized approach for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. This approach to making delisting determinations for this group of facilities is efficient while still being consistent with current laws and regulations and protective of human health and the environment.

By removing regulatory controls under RCRA, EPA is facilitating the use of aluminum in cars. EPA believes that incorporating aluminum in cars will be advantageous to the environment since lighter cars are capable of achieving better fuel economy.

*B. What is the expedited process to delist F019?*

The expedited process to delist F019 is an approach developed through a Memorandum of Understanding (MOU) with MDEQ for gathering and evaluating data in support of multiple petitions from automobile assembly plants. The expedited delisting process is applicable to wastes generated by automobile and light truck assembly plants in the State of Michigan which use a similar manufacturing process and generate similar F019 waste.

Based on available historical data and other information, the expedited process identified 70 constituents which might be of concern in the waste and provides that the F019 sludge generated by automobile assembly plants may be delisted if the levels of the 70 constituents do not exceed the allowable levels established for each constituent in this rulemaking. The maximum annual quantity of waste generated by any single facility that may be covered by an expedited delisting is 3,000 cubic yards. Delisting levels were also proposed for smaller quantities of 1,000 and 2,000 cubic yards.

## III. EPA's Evaluation of This Petition

*A. What information was submitted in support of this petition?*

AAI submitted certification that its process was the same as the process described in the MOU between Region 5 and MDEQ. See 67 FR 10341, March 7, 2002. The facility also asserted that its waste does not meet the criteria for which F019 waste was listed and there are no other factors that might cause the waste to be hazardous.

To support its exclusion demonstration, AAI collected six samples representing waste generated over six discreet one-week periods. AAI stored six roll-off boxes of sludge generated weekly from May 6 through June 16, 2005. Composite and grab samples were collected from each of the six roll-off boxes on June 25, 2005. Each sample was analyzed for: (1) Total analyses of 69 constituents of concern; (2) Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, analyses of 69 constituents of concern; (3) oil and grease; and (4) leachable metals using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A, in lieu of Method 1311 if a sample contained more than 1% oil and grease. In addition, the pH of each sample was measured and a determination was made that the waste was not ignitable, corrosive or reactive (see 40 CFR 261.21–261.23). Although the expedited delisting project originally required analysis of 70 constituents, analysis of acrylamide required extreme methods to achieve a detection level at the level of concern and no acrylamide was detected in any sample analyzed by the original facilities participating in the expedited delisting project. Thus, the Agency decided it would not be appropriate to require analysis for acrylamide. Also, AAI was not required to analyze for total sulfide and total cyanide as long as they provided the narrative determination of reactivity required in 40 CFR Part 261.23. With the exception of the minor changes described above, all sampling and analyses were done in accordance with the sampling and analysis plan, which is an appendix to the MOU and is available in the docket for this rule.

The maximum values of constituents detected in any sample of the waste (in milligrams per kilogram—mg/kg) and in a TCLP or OWEP analysis of that waste (in milligrams per liter—mg/L) are summarized in the following table. The data submitted included the appropriate quality assurance and quality control (QA/QC) information validated by a third party.

| Constituent detected | Maximum observed concentration | | Maximum allowable concentration | | GW (µg/L) |
|---|---|---|---|---|---|
| | Total (mg/kg) | TCLP (mg/L) | Total (mg/kg) | TCLP*(mg/L) | |
| Volatile Organic Compounds | | | | | |
| acetone | 8.6 | 0.43 | NA | 228 | 3,750 |
| formaldehyde | 4.6 | 0.23 | 689 | 84.2 | 1,380 |
| Semivolatile Organic Compounds | | | | | |
| bis(2-ethylhexyl)phthalate | 4.9 | <0.005 | NA | 0.0896 | 1.47 |
| di-n-octyl phthalate | 3.3 | <0.002 | NA | 0.112 | 1.3 |
| o-cresol | <1.5 | 0.0011 | NA | 114 | 1,875 |
| p-cresol | <1.5 | 0.005 | NA | 11.4 | 188 |
| Metals | | | | | |
| barium | 208 | <0.35 | NA | 100 | 2,000 |
| chromium | 58 | <0.17 | NA | 4.95 | 100 |
| lead | 9.7 | <0.2 | NA | 5 | 15 |
| mercury | <0.1 | 0.0007 | 8.92 | 0.2 | 2 |
| nickel | 1,850 | 12.8 | NA | 90.5 | 750 |
| tin | 184 | 19.6 | NA | 721 | 22,500 |
| zinc | 13,300 | 0.45 | NA | 898 | 11,300 |

* Or OWEP as applicable.
< Not detected at the specified concentration.
NA not applicable.

*B. How did EPA evaluate the information submitted?*

EPA compared the analytical results submitted by AAI to the maximum allowable levels set forth in the proposed rule (67 FR 10341, March 7, 2002). The maximum allowable levels for constituents detected in the waste or a TCLP extract of the waste are summarized in the table above, along with the observed levels. The table also includes the maximum allowable levels in groundwater at a potential receptor well (in micrograms per liter—µg/L), as evaluated by the Delisting Risk Assessment Software (DRAS). These levels are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the health-based value calculated by DRAS based on the target cancer risk level of $10^{-6}$. For arsenic, the target cancer risk was set at $10^{-4}$ in consideration of the MCL and the potential for natural occurrence. The maximum allowable groundwater concentration and delisting level for arsenic correspond to a drinking water concentration less than one half the current MCL of 10 µg/L.

EPA also used the DRAS program to estimate the aggregate cancer risk and hazard index for constituents detected in the waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is $1 \times 10^{-5}$ and the target hazard index is one. The wastewater treatment plant sludge at AAI met both of these criteria based on maximum observed values.

## IV. Public Comments Received on the Proposed Exclusion

*A. Who submitted comments on the proposed rule?*

The EPA received public comments on the proposed notice published on March 7, 2002 from Alliance of Automobile Manufacturers, Honda of America Mfg., Inc., Alcoa Inc., and The Aluminum Association. All commenters were supportive of the proposal and suggested expanding the project and revising the listing.

*B. Comments Received and Responses From EPA*

(1) *Comment:* EPA should revise the F019 listing to specify that wastewater treatment sludges from zinc phosphating operations are not within the scope of the listing. Data gathered as a result of the Expedited Delisting Project, together with the available historical data, should provide enough data to fully characterize this waste and to justify a revision of the listing.

*EPA Response:* On January 18, 2007 (72 FR 2219), the Agency proposed to amend the F019 listing to exempt the wastewater treatment sludge generated from zinc phosphating, when zinc phosphating is used in the automobile assembly process and provided the waste is disposed in a landfill unit subject to certain liner design criteria.

(2) *Comment:* EPA should issue an interpretive rule clarifying that zinc phosphating operations are outside the scope of the F019 listing.

*EPA Response:* See response to comment (1) above.

(3) *Comment:* Automobile assembly facilities outside of Michigan would like to take advantage of the precedent set by this expedited delisting project to delist F019 generated by similar operations in other states and regions.

*EPA Response:* The Agency believes that the expedited delisting procedures and requirements set forth in this proposal are appropriate for similar automotive assembly facilities outside the State of Michigan, subject to the discretion of the regulatory agency (state or region).

(4) *Comment:* Alternatives to landfilling like recycling should be allowed within the petition process.

*EPA Response:* The risk assessment model currently used by the Agency cannot predict the risks from exposure to waste that are managed through recycling. EPA's conditional delisting policy is that in order to reduce the uncertainty caused by potential unrestricted use or management of delisted waste, delistings apply only to wastes managed in the type of unit (*e.g.*, ''a landfill'') modeled in the delisting risk assessment. EPA recognizes that several recent rulemakings related to RCRA-listed hazardous wastes have proposed conditional exemptions from the regulatory definition of ''solid waste'' when such wastes, by virtue of their being recycled, are treated more as commodities than as wastes. For example, see 68 FR 61588, October 28,

2005. The Agency is not aware of any recycling or reclamation of F019 sludges; therefore, EPA believes that current market conditions do not support the recycling of F019 waste for the purposes of recovering the metal content of such waste. EPA has requested comment on whether this understanding is accurate and whether recycling of F019 waste is economically feasible under today's market conditions. See 72 FR 2224, January 18, 2007. If recycling of F019 wastes becomes economically feasible or beneficial in the future, the Agency will consider its options for how to address this, including through a subsequent rulemaking, such as the ongoing rulemaking related to the definition of solid waste.

(5) *Comment:* Analytical methods should be specified in the pre-approved common sampling plan instead of requiring each participant to submit a site-specific list of methods.

*EPA Response:* Allowing the petitioner to choose an analytical method which meets the data quality objectives specific to the delisting petition provides flexibility. Data quality objectives will vary depending on the allowable levels that are a function of the volume of petitioned waste. The Agency believes that the flexibility of performance based methods results in better data.

(6) *Comment:* Detection limits should not be required prior to sampling since they cannot be adequately predicted without a way to estimate matrix effects.

*EPA Response:* Although matrix effects cannot be assessed in advance of laboratory analysis, a laboratory should be able to provide estimated detection levels and reporting levels which are lower than, or at least equal to, the allowable delisting level for each constituent.

(7) *Comment:* Since the process generating the sludge is extremely stable, verification sampling should be conducted on an annual, instead of quarterly, basis. The requirement that any process change is promptly reported and the exclusion suspended until EPA gives written approval that the delisting can continue is an adequate safeguard justifying the decrease in sample event frequency.

*EPA Response:* Verification data submitted in conjunction with past delistings of this waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

(8) *Comment:* The final **Federal Register** should make it clear that assembly plants that manufacture light trucks are also eligible for the project.

*EPA Response:* Today's notice specifically defines eligible facilities as inclusive of manufacturers of light trucks.

(9) *Comment:* The table of maximum allowable levels in the March 7, 2002 proposed rule contains errors in the columns for vinyl chloride.

*EPA Response:* A missing space or tab in the table caused the error. The maximum allowable concentrations proposed for 2,000 cubic yards of waste should have been 115 mg/kg total and 0.00234 mg/L TCLP.

## V. Final Rule Granting This Petition

### *A. What decision is EPA finalizing?*

Today the EPA is finalizing an exclusion to conditionally delist an annual volume of 2,000 cubic yards of wastewater treatment plant sludges generated at AAI from conversion coating on aluminum.

On March 7, 2002, EPA proposed to exclude or delist this wastewater treatment sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (67 FR 10341). EPA considered all comments received, and we believe that this waste should be excluded from hazardous waste control.

After EPA proposed the exclusion for AAI in 2002, the Agency promulgated the Methods Innovation Rule (MIR)(70 FR 34538, June 14, 2005). The MIR reformed RCRA-related testing and monitoring by restricting requirements to use the methods found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' also known as ''SW–846,'' to those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a method-defined parameter). In addition, the MIR revised several conditional delistings to specifically mention method-defined parameters incorporated by reference at § 260.11 consistent with the Office of Federal Register's revised format for incorporation by reference. Therefore, EPA is including a specific reference to SW–846 Methods 1311, 1330A, and 9071B (method-defined parameters) for the generation of the leachate extract in the quarterly verification testing requirement for the AAI delisting. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11.

### *B. What are the terms of this exclusion?*

AAI must dispose of the waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial solid waste. AAI must obtain and analyze on a quarterly basis a representative sample of the waste. AAI must verify that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion. The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of constituents at the majority of facilities participating in the expedited process to delist F019 and the concentrations detected relative to the allowable levels.

This exclusion applies only to a maximum annual volume of 2,000 cubic yards and is effective only if all conditions contained in this rule are satisfied.

### *C. When is the delisting effective?*

This rule is effective April 6, 2007. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

### *D. How does this action affect the states?*

Today's exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued

exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

## VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule.

This rule also is not subject to Executive Order 13045,''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule.

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

### List of Subjects in 40 CFR Part 261

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

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

Dated: March 19, 2007.

**Margaret M. Guerriero,**

*Director, Waste, Pesticides and Toxics Division.*

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

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

■ 2. In Table 1 of Appendix IX of part 261 the following wastestream is added in alphabetical order to read as follows:

### Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility/address | Waste description |
|---|---|
| * * * * * * * | |
| AutoAlliance International Inc., Flat Rock, Michigan. | Wastewater treatment sludges, F019, that are generated by AutoAlliance International, Inc. (AAI) at Flat Rock, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludges must be disposed of in a lined landfill with leachate collection which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludges in accordance with 40 CFR part 258. The exclusion becomes effective as of April 6, 2007.<br>1. Delisting Levels: (A) The concentrations in a leachate extract of the waste measured in any sample must not exceed the following levels (mg/L): arsenic—0.3; cadmium—0.5; chromium—4.95; lead—5; nickel—90.5; selenium—1; tin—721; zinc—898; p-cresol—11.4; and formaldehyde—84.2. (B) The total concentration measured in any sample must not exceed the following levels (mg/kg): mercury—8.92; and formaldehyde—689. |

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility/address | Waste description |
|---|---|
| | 2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, AAI must collect and analyze one representative sample of the waste on a quarterly basis. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11.<br>3. Changes in Operating Conditions: AAI must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process change significantly. AAI must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in Appendix VIII of part 261 have been introduced and it has received written approval from EPA.<br>4. Data Submittals: AAI must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste and Hazardous Materials Division, Hazardous Waste Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. AAI must compile, summarize and maintain on site for a minimum of five years records of operating conditions and analytical data. AAI must make these records available for inspection. A signed copy of the certification statement in 40 CFR 260.22(i)(12) must accompany all data.<br>5. Reopener Language: (a) If, anytime after disposal of the delisted waste AAI possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then AAI must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data.<br>(b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.<br>(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will inform AAI in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing AAI with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. AAI shall have 30 days from the date of the Regional Administrator's notice to present the information.<br>(d) If after 30 days AAI presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.<br>(e) Maximum Allowable Groundwater Concentrations (μg/L): arsenic—5; cadmium—5; chromium—100; lead—15; nickel—750; selenium—50; tin—22,500; zinc—11,300; p-cresol—188; and formaldehyde—1,380. |

* * * * * * *

[FR Doc. 07–1650 Filed 4–5–07; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### 49 CFR Part 1002

**[STB Ex Parte No. 542 (Sub-No. 14)]**

### Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2007 Update

**AGENCY:** Surface Transportation Board.

**ACTION:** Final Rule.

**SUMMARY:** The Board adopts its 2007 User Fee Update and revises its fee schedule to recover the costs associated with the January 2007 Government salary increases and to reflect changes in overhead costs to the Board.

**EFFECTIVE DATE:** These rules are effective May 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** David T. Groves, (202) 245–0327, or Anne Quinlan, (202) 245–0309. [TDD for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** The Board's regulations at 49 CFR 1002.3 require that the Board's user fee schedule be updated annually. The regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d).

Because Board employees received a salary increase of 2.64% in January 2007, the Board is updating its user fees to recover the increased personnel costs. With certain exceptions, all fees, including those adopted or amended in *Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2002 New Fees,* STB Ex Parte No. 542 (Sub-No. 4) (STB served Mar. 29, 2004) will also be updated based on the cost formula contained in 49 CFR 1002.3(d). In addition, changes to the overhead costs borne by the Board are reflected in the revised fee schedule.

The fee increases adopted here result from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update*, 4 I.C.C.2d 137 (1987). No new fees are being proposed in this proceeding. Therefore, the Board finds

that notice and comment are unnecessary for this proceeding. *See Regulations Governing Fees for Services—1990 Update*, 7 I.C.C.2d 3 (1990); *Regulations Governing Fees for Services—1991 Update*, 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services—1993 Update*, 9 I.C.C.2d 855 (1993).

The Board concludes that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at *http://www.stb.dot.gov* or call the Board's Information Officer at (202) 245–0245. To purchase a copy of the decision, write to, call, e-mail, or pick up in person from ASAP Document Solutions, 9332 Annapolis Road, Suite 103, Lanham, MD 20706, (202) 306–4004, *asapdc@verizon.net*. [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877–8339.]

**List of Subjects in 49 CFR Part 1002**

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: April 2, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

**Vernon A. Williams,**

*Secretary.*

■ For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

## PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. Section 1002.1 is amended by revising paragraphs (b), (c) and (f)(1); and the table in paragraph (g)(6) to read as follows:

**§ 1002.1 Fees for record search, review, copying, certification, and related services.**

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $36.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., identical thereto, at the rate of $25.00 per hour.

* * * * *

(f) * * *

(1) A fee of $64.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(g) * * *

(6) * * *

| Grade | Rate | Grade | Rate |
|---|---|---|---|
| GS–1 | $10.71 | GS–9 ..... | $25.00 |
| GS–2 | 11.66 | GS–10 ..... | 27.53 |
| GS–3 | 13.14 | GS–11 ..... | 30.25 |
| GS–4 | 14.75 | GS–12 ..... | 36.26 |
| GS–5 | 16.50 | GS–13 ..... | 43.12 |
| GS–6 | 18.39 | GS–14 ..... | 50.95 |
| GS–7 | 20.44 | GS–15 and over. | 59.93 |
| GS–8 | 22.64 | | |

* * * * *

■ 3. In § 1002.2, paragraph (f) is revised as follows:

**§ 1002.2 Filing fees.**

* * * * *

(f) *Schedule of filing fees.*

| Type of proceeding | Fee |
|---|---|
| PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement | |
| (1) An application for the pooling or division of traffic | $3,700. |
| (2) (i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303 | 1,700. |
| (ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered | 2,800. |
| (iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d) | 2,300. |
| (3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703 | 23,600. |
| (4) An application for approval of an amendment to a non-rail rate association agreement: | |
| (i) Significant amendment | 3,900. |
| (ii) Minor amendment | 90. |
| (5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i) | 400. |
| (6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family | 1,500. |
| (7)–(10) [Reserved] | |
| PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings | |
| (11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901 | $6,200. |
| (ii) Notice of exemption under 49 CFR 1150.31–1150.35 | 1,600. |
| (iii) Petition for exemption under 49 U.S.C. 10502 | 10,700. |
| (12) (i) An application involving the construction of a rail line | 63,800. |
| (ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36 | 1,600. |
| (iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line | 63,800. |
| (iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d) | 200. |
| (13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii) | 2,600. |
| (14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902 | 5,300. |
| (ii) Notice of exemption under 49 CFR 1150.41–1150.45 | 1,600. |
| (iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902 | 5,700. |
| (15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24 | 1,400. |

| Type of proceeding | Fee |
|---|---|
| (16)–(20) [Reserved] | |
| PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings | |
| (21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments) | $18,900. |
| (ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50 | 3,200. |
| (iii) A petition for exemption under 49 U.S.C. 10502 | 5,400. |
| (22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act. | 400. |
| (23) Abandonments filed by bankrupt railroads | 1,600. |
| (24) A request for waiver of filing requirements for abandonment application proceedings | 1,500. |
| (25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment | 1,300. |
| (26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned | 19,300. |
| (27) (i) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d) | 200. |
| (ii) A request to extend the period to negotiate a trail use agreement | 350. |
| (28)–(35) [Reserved] | |
| PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement | |
| (36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102 | $16,200. |
| (37) An application for the pooling or division of traffic. 49 U.S.C. 11322 | 8,700. |
| (38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324: | |
| (i) Major transaction | 1,275,100. |
| (ii) Significant transaction | 255,000. |
| (iii) Minor transaction | 6,600. |
| (iv) Notice of an exempt transaction under 49 CFR 1180.2(d) | 1,500. |
| (v) Responsive application | 6,600. |
| (vi) Petition for exemption under 49 U.S.C. 10502 | 8,000. |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 4,700. |
| (39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324: | |
| (i) Major transaction | 1,275,100. |
| (ii) Significant transaction | 255,000. |
| (iii) Minor transaction | 6,600. |
| (iv) A notice of an exempt transaction under 49 CFR 1180.2(d) | 1,100. |
| (v) Responsive application | 6,600. |
| (vi) Petition for exemption under 49 U.S.C. 10502 | 8,000. |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 4,700. |
| (40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324: | |
| (i) Major transaction | 1,275,100. |
| (ii) Significant transaction | 255,000. |
| (iii) Minor transaction | 6,600. |
| (iv) Notice of an exempt transaction under 49 CFR 1180.2(d) | 1,000. |
| (v) Responsive application | 6,600. |
| (vi) Petition for exemption under 49 U.S.C. 10502 | 8,000. |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 4,700. |
| (41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324: | |
| (i) Major transaction | 1,275,100. |
| (ii) Significant transaction | 255,000. |
| (iii) Minor transaction | 6,600. |
| (iv) Notice of an exempt transaction under 49 CFR 1180.2(d) | 1,200. |
| (v) Responsive application | 6,600. |
| (vi) Petition for exemption under 49 U.S.C. 10502 | 5,700. |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) | 4,700. |
| (42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5) | 2,100. |
| (43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706 | 59,700. |
| (44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706: | |
| (i) Significant amendment | 11,000. |
| (ii) Minor amendment | 90. |
| (45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328 | 650. |
| (46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered | 6,800. |
| (47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562 | 200. |

| Type of proceeding | Fee |
|---|---|
| (48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act | 200. |
| (49)–(55) [Reserved] | |
| PART V: Formal Proceedings | |
| (56) A formal complaint alleging unlawful rates or practices of carriers: | |
| (i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) | $178,200. |
| (ii) A formal complaint involving rail maximum rates filed under the small rate case procedures | 150. |
| (iii) All other formal complaints (except competitive access complaints) | 17,600. |
| (iv) Competitive access complaints | 150. |
| (v) A request for an order compelling a rail carrier to establish a common carrier rate | 200. |
| (57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705 | 7,500. |
| (58) A petition for declaratory order: | |
| (i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding | 1,000. |
| (ii) All other petitions for declaratory order | 1,400. |
| (59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A) | 6,000. |
| (60) Labor arbitration proceedings | 200. |
| (61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d) | 200. |
| (ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings | 300. |
| (62) Motor carrier undercharge proceedings | 200. |
| (63) (i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency | 200. |
| (ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacies | 200. |
| (64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a) | 500. |
| (65)–(75) [Reserved] | |
| PART VI: Informal Proceedings | |
| (76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706 | 1,000. |
| (77) An application for special permission for short notice or the waiver of other tariff publishing requirements | $100. |
| (78) The filing of tariffs, including supplements, or contract summaries | $1 per page. ($21 minimum charge.) |
| (79) Special docket applications from rail and water carriers: | |
| (i) Applications involving $25,000 or less | 50. |
| (ii) Applications involving over $25,000 | 100. |
| (80) Informal complaint about rail rate applications | 500. |
| (81) Tariff reconciliation petitions from motor common carriers: | |
| (i) Petitions involving $25,000 or less | 50. |
| (ii) Petitions involving over $25,000 | 100. |
| (82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3) | 200. |
| (83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c) | $35 per document. |
| (84) Informal opinions about rate applications (all modes) | 200. |
| (85) A railroad accounting interpretation | 950. |
| (86) (i) A request for an informal opinion not otherwise covered | 1,200. |
| (ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a) | 4,300. |
| (iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered | 400. |
| (87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108: | |
| (i) Complaint | 75. |
| (ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration | 75. |
| (iii) Third Party Complaint | 75. |
| (iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration | 75. |
| (v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award | 150. |
| (88) Basic fee for STB adjudicatory services not otherwise covered | 200. |
| (89)–(95) [Reserved] | |
| PART VII: Services | |
| (96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent | $27 per delivery. |
| (97) Request for service or pleading list for proceedings | $20 per list. |
| (98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that: | |
| (i) Does not require a FEDERAL REGISTER notice: | |
| (a) Set cost portion | $100. |

| Type of proceeding | Fee |
|---|---|
| (b) Sliding cost portion | $40 per party. |
| (ii) Does require a FEDERAL REGISTER notice: | |
| (a) Set cost portion | $350. |
| (b) Sliding cost portion | $40 per party. |
| (99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam | $150. |
| (ii) Practitioners' Exam Information Package | 25. |
| (100) Uniform Railroad Costing System (URCS) software and information: | |
| (i) Initial PC version URCS Phase III software program and manual | 50. |
| (ii) Updated URCS PC version Phase III cost file—per year | $25 per year. |
| (iii) Public requests for *Source Codes* to the PC version URCS Phase III | $100. |
| (101) Carload Waybill Sample data on recordable compact disk (R–CD): | |
| (i) Requests for Public Use File on R–CD—per year | $250 per year. |
| (ii) Waybill—Surface Transportation Board or State proceedings on R–CD—per year | $500 per year. |
| (iii) User Guide for latest available Carload Waybill Sample | $50. |
| (iv) Specialized programming for Waybill requests to the Board | $95 per hour. |

* * * * *

[FR Doc. E7–6479 Filed 4–5–07; 8:45 am]

**BILLING CODE 4915–01–P**

# Proposed Rules

Federal Register
Vol. 72, No. 66
Friday, April 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 959

**[Docket Nos. AO–322–A4; AMS–2006–0079; FV06–959–1]**

## Onions Grown in South Texas; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Agreement No. 143 and Order No. 959

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order (order) for onions grown in South Texas. Three amendments were proposed by the South Texas Onion Committee (committee), which is responsible for local administration of the order. These proposed amendments would: Add authority to the order to establish supplemental assessment rates on specified containers of onions; authorize interest and late payment charges on assessments not paid within a prescribed time period; and authorize the committee to engage in marketing promotion and paid advertising activities. Two additional amendments were proposed by the Department of Agriculture (USDA). These amendments would: Require that a continuance referendum be conducted every six years to determine grower support for the order; and, limit the number of consecutive terms of office a member can serve on the committee. The USDA also proposed to make such changes to the order as may be necessary to conform to any amendment that may result from the hearing.

**DATES:** Written exceptions must be filed by May 7, 2007.

**ADDRESSES:** Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1081–S, Washington, DC 20250–9200; *Fax:* (202) 720–9776; or via the Internet at *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 2202 Monterey Street, #102–B, Fresno, CA 93721; *telephone:* (559) 487–5110, *Fax:* (559) 487–5906, *E-mail: Martin.Engeler@usda.gov*; or Kathleen M. Finn, 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, *E-mail: Kathy.Finn@usda.gov.*

Small businesses may request information on this proceeding 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, *E-mail: Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding include a Notice of Hearing issued on May 23, 2006, and published in the May 30, 2006, issue of the **Federal Register** (71 FR 30629).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement 143 and Order No. 959 regulating the handling of onions grown in South Texas, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Martin Engeler, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held on June 15, 2006, in Mission, Texas. Notice of this hearing was published in the **Federal Register** on May 30, 2006 (71 FR 30629). The notice of hearing contained proposals submitted by both the committee and USDA.

Four proposed amendments to the order were initially submitted by the committee to USDA. These proposals were the result of deliberations and a recommendation by the committee at a public meeting on October 28, 2004. The four proposed amendments were included in the notice of hearing. Proposal number four in the notice of hearing pertaining to container marking requirements was withdrawn at the hearing because the committee determined it was not needed and recommended it be withdrawn at a meeting on June 1, 2006. The committee's remaining three proposed amendments to the order would: (1) Provide authority to establish supplemental assessment rates on specified containers of onions; (2) authorize interest and late payment charges on assessments not paid within a prescribed time period; and (3) add authority for marketing promotion, including paid advertising.

The USDA proposed two additional amendments that would: Require a continuance referendum to be conducted every six years to determine grower support for the order; and limit the number of consecutive years terms of office a member may serve on the committee. USDA also proposed to make such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Four industry witnesses testified at the hearing. These witnesses represented onion growers and handlers in the production area, as well as the committee, and they all supported the committee's recommended changes. The witnesses expressed the need to provide the industry with additional tools to aid in the marketing of onions and to

improve the operation and administration of the order.

Witnesses expressed their support of the committee's recommendation to add authority for supplemental rates of assessment for specified containers of onions. Additional funds generated from supplemental rates of assessment could be used for promotion of onions packed in specified containers.

Witnesses also offered testimony in support of adding authority to charge interest and/or late payment charges on assessments not paid within a prescribed time period. This authority, if implemented, would provide an incentive for handlers to pay assessments in a timely manner and would be consistent with standard business practices.

Witnesses addressed the need for adding authority to the order for marketing promotion, including paid advertising. This authority would enable the committee to engage in various types of promotional activities to assist in the marketing of its product, which could lead to greater market exposure and consumer demand for South Texas onions, thereby fostering improved grower returns.

A USDA witness testified in support of tenure limitations as a way to broaden industry participation in the program. The USDA witness also presented testimony in support of periodic continuance referenda as a means of determining grower support for the order.

At the conclusion of the hearing, the Administrative Law Judge stated that the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing would be August 15, 2006. If the hearing transcript was not posted on the Internet by July 15, 2006, the final date would be changed to 30 days after the date the hearing transcript was so posted. The transcript was posted prior to July 15; thus, the filing date remained at August 15, 2006. No briefs were filed.

**Material Issues**

The material issues presented on the record of hearing are as follows:

(1) Whether to amend the order to add authority for supplemental rates of assessment for specified containers of onions;

(2) Whether to amend the order to add authority for late payment and interest charges on assessments not paid within a prescribed time period;

(3) Whether to amend the order to add authority for the committee to engage in marketing promotion, including paid advertising activities;

(4) Whether to amend the order to limit the number of consecutive terms of office a person can serve as a member on the committee; and

(5) Whether to amend the order to require that continuance referenda be held every 6 years.

**Findings and Conclusions**

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

**Material Issue Number 1—Supplemental Rates of Assessment**

Section 959.42 of the order should be amended to add authority to establish supplemental rates of assessment on specified containers of onions. That section currently authorizes establishment of assessment rates on containers of onions, but not supplemental rates based on the types of containers used in packing and shipping onions. The assessment rate is established through informal rulemaking after recommendation of the committee and implementation by USDA. Once established, handlers are required to pay an assessment to the committee based on the quantity of containers they ship. If authority to establish supplemental rates of assessment is added to the order, any supplemental rate would likewise require recommendation of the committee and implementation by USDA through informal rulemaking.

Witnesses testified that the South Texas onion industry is geared primarily towards the fresh market. The product is typically packed and marketed in two types of containers. The lower quality (standard) product is packed and sold in 50-pound sacks, while the higher quality (premium) product is packed and sold in more appealing 40-pound cartons. The premium product is a milder, sweeter onion due to its lower pyruvic acid content. Onions are routinely tested to measure their pyruvic acid level prior to packing to ensure that the onions packed in cartons is in fact a premium quality product. According to record evidence, premium carton onions are typically sold at retail outlets as a higher-end product at relatively higher price levels as compared to standard bagged onions which are customarily sold to foodservice outlets at relatively lower price levels.

Witnesses testified that the industry would like to increase sales and build demand for its higher value, premium product by promoting it and differentiating it from standard product. Witnesses also testified that the committee would like to expand the range of promotional opportunities available to promote its product, and that this proposal goes hand in hand with the proposal to allow marketing promotion, including paid advertising (Material Issue Number 3). The rationale and anticipated benefits of advertising and promotion are discussed later under Material Issue Number 3.

According to record testimony, the funding of promotional activities for premium onions packed in cartons should be derived by applying a supplemental assessment rate to such product. Witnesses stated that any funds raised from a supplemental assessment should be used for promotion of that specific product. Testimony indicated that the primary benefits of promoting premium quality onions would accrue to those growers and handlers involved in producing and selling that product. Therefore, it would be more equitable for those benefiting from these activities to provide the funding, rather than using funding from a general assessment on all onions packed and sold.

A witness testified that applying a supplemental assessment rate on carton onions would not pose any problems from an administrative standpoint. All regulated South Texas onions are required to be inspected by the Federal-State Inspection Service prior to shipment. The inspection certificates provide the basis for assessment billings, and the certificates indicate the numbers and types of containers used. Committee staff utilizes this information in its assessment billings.

Testimony was also presented which addressed concerns regarding potential compliance issues with a supplemental assessment rate. It was hypothesized that handlers could circumvent a supplemental assessment rate by packing in bags prior to inspection, and then re-packing the product in cartons after the inspection was performed. Witnesses stated there would be no incentive for this to occur, since the costs associated with re-packing would far exceed any additional supplemental assessment rate incurred.

The record evidence supports adding authority to the order to establish supplemental rates of assessment on specified containers of onions. In addition, the evidence supports applying such supplemental assessment funds towards programs designed to promote the product upon which the supplemental assessments would be collected. The regulatory language contained in the Notice of Hearing and presented at the hearing did not address this specific issue. However, based on the testimony received at the hearing, it

is recommended that the proposed regulatory language be modified to specify that funds collected from a supplemental assessment rate be used for projects and activities related to the product upon which such assessments are collected.

For the above reasons, it is recommended that § 959.42 be amended accordingly as modified. There was no testimony in opposition to this proposal.

**Material Issue Number 2—Authority for Interest and Late Payment Charges on Unpaid Assessments**

Section 959.42 of the order should be amended to include authority for the committee to charge interest and late payment fees for assessments not paid within a prescribed timeframe. That section of the order currently does not contain such authority. If such authority is added, informal rulemaking would be required to establish parameters for implementation, including applicable interest rates and late payment fees.

Witnesses testified that adding such authority to the order would provide the committee with an additional tool to administer the assessment collection provisions of the order. Charging late fees and/or interest on assessments not paid within a prescribed time frame would provide an incentive for handlers to pay assessments in a timely manner. Further testimony stated that such fees would remove any financial advantage for those who do not pay on time while they benefit from committee programs. It would help create a level playing field for the industry.

Record testimony reflects that late payment and interest charges on unpaid financial obligations are commonplace in the business world, and implementation of such charges would bring the committee's financial operations in line with standard business practices.

Section 959.42 should thus be amended to include authority for the committee, with approval of the Secretary, to implement late payment and interest charges on assessments not paid within a prescribed time period. There was no testimony in opposition to this proposal.

**Material Issue Number 3—Authority for Marketing Promotion, Including Paid Advertising**

Section 959.48 of the order should be amended to include authority for marketing promotion, including paid advertising. Section 959.48 currently authorizes only production research, marketing research, and development activities. Adding authority for marketing promotion and paid advertising to the order would expand the promotional opportunities available to the committee to help market South Texas onions.

Witnesses testified that the intent of this proposal is to allow the committee to engage in paid advertising promotional activities, should the committee so choose.

As previously discussed under Material Issue Number 1, the industry believes it would be beneficial to promote its premium onions packed in cartons. Witnesses testified that it is becoming increasingly difficult to succeed in the produce industry due to domestic and foreign competition. In order to remain competitive and maintain a viable onion industry in South Texas, witnesses indicated that advertising and promotion is important to promote the best quality product available.

Industry witnesses further testified that promotion of carton onions at the retail level could be undertaken which would help differentiate the product from bagged onions, and also differentiate Texas onions from onions produced in other competing geographical areas. Promotions would be designed to influence consumer's perceptions and increase awareness of the product. This in turn could lead to repeat purchases, thus building demand for the product. Successful promotion could lead to increased demand which in turn could lead to increased price levels, and the end result would be improved returns to producers and handlers of South Texas onions.

Witnesses stated that the committee currently has limited financial resources and would not likely engage in a significant advertising campaign. It is more likely to partner with retailers in purchasing advertising space in newspapers and/or radio and television spots. This type of advertising has been proven to be an effective means of selling commodities and presents a cost effective method of advertising with limited resources. However, should the committee choose to devote adequate funding, it could also engage in other forms of advertising. Witnesses testified that the committee had been precluded from participating in these types of activities in the past due to constraints in the order authority.

Witnesses further testified that any promotional activity the committee engages in must be fully vetted by the committee at public meetings, and the committee would only engage in those activities with the expectation that sales would increase and returns to handlers and producers would improve.

The record supports adding authority for marketing promotion, including paid advertising, to § 959.48 of the order. There was no opposition testimony on this issue.

**Material Issue Number 4—Term Limits**

Section 959.23, Term of office, should be revised to establish a limit on the number of consecutive terms a person may serve on the committee.

Currently, the term of office of each member and alternate member of the committee is two years. There are no provisions related to term limits in the marketing order. Members and alternates may serve on the committee until their respective successors are selected and have qualified, pursuant to the marketing order.

The record shows that USDA proposed tenure requirements for committee members is a means to increase industry participation on the committee, provide for more diverse membership, provide the committee with new perspectives and ideas, and increase the number of individuals in the industry with committee experience.

Experience with other marketing order programs suggests that a period of six years would be appropriate. Since the current term of office for committee members and alternates is two years, USDA is proposing that no member serve more than three consecutive two-year terms or a total of six years. This proposal for a limitation on tenure would not apply to alternates. Once a member has served on the committee for three consecutive terms, or six years, the member would be required to sit out for at least one year before being eligible to serve as a member again. The member could serve as an alternate during that time. Service on the committee prior to the effective date of this change would not apply to a member's term limitation. Also, a person who has served less than six consecutive years on the committee may not be selected for a new term if his or her total consecutive years on the committee at the end of that new term would exceed six years.

There was no opposition testimony on this issue. Therefore, it is recommended that the order be amended to establish term limit requirements for committee members.

**Material Issue Number 5—Continuance Referenda**

Section 959.84, Termination, should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no provision in the marketing order that requires periodic

continuance referenda. The record evidence indicates that growers should have an opportunity to periodically vote on whether the marketing order should continue. Continuance referenda provide an industry with a means to measure grower support for the marketing order program. Since marketing orders are designed to benefit growers, it follows that they should be afforded the opportunity to express whether they support the programs on a periodic basis. Experience has shown that marketing order programs need significant industry support to operate effectively. Under this proposal, USDA would consider termination of the marketing order if continuance is not favored by at least two-thirds of those voting, or at least two-thirds of the volume represented in the referendum. This is the same criteria as that for issuance of an order. Experience in recent years indicates that six years is an appropriate period to allow growers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the effective date of this amendment and every sixth year thereafter.

The proposed regulatory text set forth in the Notice of Hearing did not include the above-mentioned criteria the Department would consider in determining if the order should be continued or terminated. To provide clarity, the Department recommends including such criteria in the proposed amended regulatory text.

The Department believes that growers should have an opportunity to periodically vote on whether the marketing order should continue. There was no opposition testimony on this issue. Accordingly, it is recommended that the order be amended to require a continuance referendum every six years, and that such amendment include criteria the Department would consider in determining if the order should be continued or terminated.

USDA also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. No necessary conforming changes have been identified at this time.

**Small Business Considerations**

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,500,000.

There are approximately 114 growers of onions in the production area and approximately 38 handlers subject to regulation under the order. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $1.16 million and $1.12 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other productive enterprises would likely push a number of these handlers above the $6,500,000 annual receipt threshold. Likewise, all of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

The committee is comprised of 10 growers and 7 handlers, representing both large and small entities. Committee meetings are open to the public. All members are able to participate in committee deliberations and each has an equal vote in committee decisions. When the committee met on October 28, 2004, and recommended the proposed amendments, all views expressed by the members and others in attendance were considered.

In addition, the hearing to receive evidence on the proposed changes was open to the public and all interested parties were invited and encouraged to participate and provide their views.

The proposed amendments are intended to provide the committee and industry with additional tools to aid in the marketing of South Texas onions, and to improve the operation and administration of the order. Record evidence indicates that the proposed changes are intended to benefit all onion producers and handlers under the order, regardless of size. Witnesses testified that the impact of any of the proposals, if implemented, would be proportionate to individual grower's and handler's size, and that both small and large entities would benefit.

The record shows that the proposal to include authority for supplemental rates of assessments on specified containers would not have a differential impact on small versus large growers and handlers. Any increased assessment costs would be based on the type and volume of containers shipped rather than the size of a grower or handler's operation. Any supplemental assessment rate would thus be applied proportionately to handlers.

Onions that are packed and sold in cartons receive a higher return than onions packed and sold in bags or sacks. There is no known relationship between small versus large growers and handlers and the types of containers in which they pack their product. If onions packed in the higher value cartons were assessed at a higher rate, the assessment burden on the industry would be more proportionate to the revenues generated by the sales of product in the different types of containers.

In absolute dollar terms, a handler packing and selling only carton onions would pay more in assessments than a handler packing and selling a comparable volume of bagged onions. However, witnesses testified that additional funds generated from the supplemental assessment rate on specified containers would be used to promote sales of the product packed and sold in those containers. Therefore, the benefits of promotion would more directly benefit those paying the supplemental assessment. As discussed later in this document, the benefits of such promotions would be expected to outweigh the additional costs. Assessment revenues generated from supplemental assessment rates on specified containers would not be used to subsidize the lower assessment revenues generated from sales of the lower value product, thereby ensuring equitability between handlers.

The proposed amendment to authorize the committee to charge interest and/or late payment fees on

assessments not paid within a prescribed time period would not have a differential impact on small and large entities. According to record testimony, late fees and interest changes, if implemented, would be based on handlers' timeliness of payments, regardless of size. A hearing witness familiar with the assessment collection operations under the order stated that there is no relationship between a handler's performance with regard to timely assessment payment and the size of the handler's business operation. Any increased costs would be borne only by those handlers that fail to pay their assessments in a timely manner. These potential costs would offset any potential advantage handlers could gain by not paying their assessments when due and would thus promote equity for all handlers. It would provide an incentive to pay on time. This proposed amendment is strictly a performance-based measure and would thus be applied based on handlers' performance with respect to their payment of assessments.

Adding authority for paid advertising to the order would not disproportionately impact small business if such authority is implemented. Paid advertising activities would provide another tool the committee could use to promote its product. Paid advertising activities would be funded from handler assessments, which, as previously mentioned, are proportional to the volume of product shipped and thus proportional to the handler's relative size. Likewise, funding of the activities would be proportional.

Promotional activities authorized under the order are generic in nature. Generic advertising and promotion attempts to influence consumer's preferences and perceptions about a product, and if successful, ultimately expands the demand for the product. Because generic promotion promotes a product category, it benefits all entities in the category, especially growers and handlers. As witnesses testified, specific benefits of promotion and advertising programs are difficult to quantify, and are especially difficult to estimate prior to engaging in the activities. However, if more product is ultimately sold, both large and small growers and handlers benefit.

The proposed amendment to limit the number of consecutive terms of office that committee members may serve would increase industry participation on the committee by allowing more persons the opportunity to serve as members of the committee. It would also provide for more diverse membership, provide the committee with new perspectives and ideas, and increase the number of individuals in the industry with committee experience. There would be no additional cost as a result of this amendment.

The proposal to require continuance referenda on a periodic basis to ascertain grower support for the order would allow growers to vote on whether to continue the operation of the program. This provides a means for those whom the order was intended to benefit with an opportunity to express their views regarding continuation of the marketing order. USDA would conduct the referenda, and thus USDA would bear the majority of any associated costs.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs would be outweighed by the benefits expected to accrue to the South Texas onion industry. In addition, any additional costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. The amendments are designed to improve the administration and operation of the order and to provide additional tools to assist in the marketing of South Texas onions.

Committee meetings regarding these proposals as well as the hearing date and location were widely publicized throughout the Texas onion industry. All interested persons were invited to attend the meetings and the hearing and participate in deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were provided the opportunity to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because these proposed changes have already been widely publicized and the committee and industry would like to avail themselves of the opportunity to implement the changes as soon as possible. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

**Paperwork Reduction Act**

Current information collection requirements for part 959 are approved by the Office of Management and Budget (OMB) under OMB number 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

**Civil Justice Reform**

The amendments to Marketing Order 959 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Department 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the 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 the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

**General Findings**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby

proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of onions grown in the production area (designated counties in South Texas) in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions grown in the production area; and

(5) All handling of onions grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

**List of Subjects in 7 CFR Part 959**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

## PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 959.23 paragraph (a) is revised to read as follows:

**§ 959.23 Term of office.**

(a) The term of office of committee members and their respective alternates shall be for two years and shall begin as of August 1 and end as of July 31. The terms shall be so determined that about one-half of the total committee membership shall terminate each year. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms may not serve as members for at least one year before becoming eligible to serve again. A person who has served less than six consecutive years on the committee may not be nominated to a new two-year term if his or her total consecutive years on the committee at the end of that new term would exceed six years. This limitation on the number of consecutive terms and years does not apply to service on the committee prior to the enactment of this provision and does not apply to alternates.

* * * * *

3. Revise paragraph (b) of § 959.42 to read as follows:

**§ 959.42 Assessments.**

* * * * *

(b) Based upon the recommendation of the committee or other available data, the Secretary shall fix a base rate of assessment that handlers shall pay on all onions handled during each fiscal period. Upon recommendation of the committee, the Secretary may also fix supplemental rates on specified containers, including premium containers, identified by the committee and used in the production area: Provided, That any such supplemental assessment funds shall be used, to the extent practicable, for projects and activities related to the product upon which such assessments are collected.

* * * * *

4. Add a new paragraph (e) to § 959.42 to read as follows:

**§ 959.42 Assessments.**

* * * * *

(e) If a handler does not pay assessments within the time prescribed by the committee, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the committee with approval of the Secretary.

5. Revise § 959.48 to read as follows:

**§ 959.48 Research and development.**

The committee, with approval of the Secretary, may establish or provide for the establishment of production research, marketing research, development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of onions. The expenses of such projects shall be paid from funds collected pursuant to § 959.42.

6. In § 959.84, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

**§ 959.84 Termination.**

* * * * *

(d) The Secretary shall conduct a referendum within six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance is favored by producers. The Secretary would consider termination of this part if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of onions represented in the referendum favor continuance.

* * * * *

Dated: March 29, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–6234 Filed 4–5–07; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–27785; Directorate Identifier 2006–NM–267–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes and Model ERJ 190 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found that some ''caution'' messages issued by the Flight Guidance Control System (FGCS) are not displayed on aircraft equipped with [certain] EPIC software load[s] * * *. Therefore, following a possible failure on one FGCS channel during a given flight, such a failure condition will remain undetected * * *. If another failure occurs on the second FGCS channel, the result may be a command hardover by the autopilot.

A command hardover is a sudden roll, pitch, or yaw movement, which could

result in reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by May 7, 2007.

**ADDRESSES:** You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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: http://www.regulations.gov.* Follow the instructions for submitting comments.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27785; Directorate Identifier 2006–NM–267–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because 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 we receive about this proposed AD.

## Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2006–11–02 and 2006–11–03, both effective November 16, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI for Model ERJ 170 airplanes states:

> It has been found that some ''caution'' messages issued by the Flight Guidance Control System (FGCS) are not displayed on aircraft equipped with EPIC software load 17.3 or 17.5. Therefore, following a possible failure on one FGCS channel during a given flight, such a failure condition will remain undetected or latent in subsequent flights. If another failure occurs on the second FGCS channel, the result may be a command hardover by the autopilot.

The MCAI for Model ERJ 190 airplanes states:

> It has been found that some ''caution'' messages issued by the Flight Guidance Control System (FGCS) are not displayed on aircraft equipped with EPIC software load 4.3, 4.4 or 4.5. Therefore, following a possible failure on one FGCS channel during a given flight, such a failure condition will remain undetected or latent in subsequent flights. If another failure occurs on the second FGCS channel, the result may be a command hardover by the autopilot.

A command hardover is a sudden roll, pitch, or yaw movement, which could result in reduced controllability of the airplane. The MCAIs mandate a functional test of the flight guidance control system channels engagement. The corrective action is replacement of the actuator input-output processor if necessary. You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

EMBRAER has issued Service Bulletins 170–22–0003 and 190–22–0002, both dated November 9, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

## Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 98 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $15,680, or $160 per product.

## 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 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 this proposed regulation:

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

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

3. 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.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket No. FAA–2007–27785; Directorate Identifier 2006–NM–267–AD.

### Comments Due Date

(a) We must receive comments by May 7, 2007.

### Affected ADs

(b) None.

### Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes, and Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; certificated in any category.

### Subject

(d) Auto Flight.

### Reason

(e) The mandatory continuing airworthiness information (MCAI) for Model ERJ 170 airplanes states:

It has been found that some ''caution'' messages issued by the Flight Guidance Control System (FGCS) are not displayed on aircraft equipped with EPIC software load 17.3 or 17.5. Therefore, following a possible failure on one FGCS channel during a given flight, such a failure condition will remain undetected or latent in subsequent flights. If another failure occurs on the second FGCS channel, the result may be a command hardover by the autopilot.

The MCAI for Model ERJ 190 airplanes states:

It has been found that some ''caution'' messages issued by the Flight Guidance Control System (FGCS) are not displayed on aircraft equipped with EPIC software load 4.3, 4.4 or 4.5. Therefore, following a possible failure on one FGCS channel during a given flight, such a failure condition will remain undetected or latent in subsequent flights. If another failure occurs on the second FGCS channel, the result may be a command hardover by the autopilot.

A command hardover is a sudden roll, pitch, or yaw movement, which could result in reduced controllability of the airplane. The MCAIs mandate a functional test of the flight guidance control system channels engagement. The corrective action is replacement of the actuator input-output processor if necessary.

### Actions and Compliance

(f) Unless already done, do the following actions: Within 300 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, carry out a functional test in accordance with EMBRAER Service Bulletin 170–22–0003 or EMBRAER Service Bulletin 190–22–0002, both dated November 9, 2006, as applicable, to check the Flight Guidance Control System (FGCS) channels engagement, and, before further flight, do all applicable replacements of the actuator input-output processor in accordance with the applicable service bulletin.

**Note 1:** For the purpose of this AD, a functional check is: ''A quantitative check to determine if one or more functions of an item perform within specified limits.''

### FAA AD Differences

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

### Other FAA AD Provisions

(g) *The following provisions also apply to this AD:*

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, *Attn:* Todd Thompson, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

### Related Information

(h) Refer to MCAI Brazilian Airworthiness Directives 2006–11–02 and 2006–11–03, both effective November 16, 2006; and EMBRAER Service Bulletins 170–22–0003 and 190–22–0002, both dated November 9, 2006; for related information.

Issued in Renton, Washington, on March 28, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–6445 Filed 4–5–07; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2007–27346; Directorate Identifier 2007–NE–07–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; 90XX and 92XX Sicma Aero Seat Passenger Seats

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Cracks have been found in central spreaders P/N 92–000100–200–1 or P/N 92–000101–200–1. This may heavily affect the structural integrity of the seat.

Failure of the central spreaders could result in injury to an occupant during emergency conditions. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by May 7, 2007.

**ADDRESSES:** You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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: http://www.regulations.gov.* Follow the instructions for submitting comments.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate; 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7161; fax 781–238–7170.

**SUPPLEMENTARY INFORMATION:**

### Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27346; Directorate Identifier 2007–NE–07–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 we receive about this proposed AD.

### Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the aviation authority for France, has issued French Airworthiness Directive 2002–504(AB), dated October 12, 2002, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Cracks have been found in central spreaders P/N 92–000100–200–1 or P/N 92–000101–200–1. This may heavily affect the structural integrity of the seat.

Failure of the central spreaders could result in injury to an occupant during emergency conditions.

You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Sicma Aero Seat has issued Service Bulletin (SB) 92–25–005, revision 3, dated January 17, 2003. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 3,283 products of U.S. registry. We also estimate that it would

take about 6.017 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $206.75 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,259,064.

## 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 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 this proposed regulation:

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

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

3. 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.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Sicma Aero Seat:** Docket No. FAA–2007–27346; Directorate Identifier 2007–NE–07–AD.

### Comments Due Date

(a) We must receive comments by May 7, 2007.

### Affected ADs

(b) None.

### Applicability

(c) This AD applies to 90XX and 92XX Sicma Aero Seat passenger seats. These products are installed on, but not limited to, Aerospatiale ATR42 and ATR72 airplanes.

### Reason

(d) Cracks have been found in central spreaders P/N 92–000100–200–1 or P/N 92–000101–200–1. This may heavily affect the structural integrity of the seat.

Failure of the central spreaders could result in injury to an occupant during emergency conditions.

### Actions and Compliance

(e) Before 500 flight hours after the effective date of this AD, unless already done, do the following actions:

(1) Perform a visual inspection of central spreaders P/N 92–000100–200–1 or P/N 92–000101–200–1 of the affected seats using the Accomplishment Instructions ''Checking Procedures'' of Sicma Aero Seat Service Bulletin (SB) 92–25–005, revision 3, dated January 17, 2003. If no crack is found, repeat this inspection at intervals not exceeding 500 flight hours.

(2) Type 1, 2, and 3 cracks are defined in the Accomplishment Instructions ''Checking Procedures'' of Sicma Aero Seat SB 92–25–005, revision 3, dated January 17, 2003.

(i) If a type 1 crack is found, before 6 months or before 500 flight hours, whichever comes first, check the crack to determine that it did not enlarge to a type 2 or type 3 crack, install doublers P/N 00–6536, and record this modification by using Part One; B ''Seat identification'' of Sicma SB 92–25–005, revision 3, dated January 17, 2003.

(ii) If a type 2 or 3 crack is found, before further flight, replace the affected central spreader with a new one with the same part number, equipped with doublers P/N 00–6536.

(iii) If a new spreader is unavailable, do a temporary repair by installing doublers P/N 00–6536. This temporary repair may remain in place no longer than 500 flight hours or six months, whichever comes first. After removing the temporary repair, install a new spreader with the same part number equipped with doublers P/N 00–6536, and record this modification by following the instructions in paragraph Part Three; B ''Seat identification'' of Sicma SB 92–25–005, revision 3, dated January 17, 2003.

(3) If not already done, before March 31, 2010, install doublers P/N 00–6536 on central spreaders of affected seats. Record this modification by following instructions in Part Two; B ''Seat identification'' of Sicma SB 92–25–005, revision 3, dated January 17, 2003.

### FAA AD Differences

(f) This AD differs from the DGAC mandatory continuing airworthiness information (MCAI) and/or service information in the terminating action date for installing doublers P/N 00–6536 on central spreaders of affected seats. The MCAI requires these doublers to be installed by December 31, 2005. This AD, written in 2007, requires the doublers to be installed by March 31, 2010.

### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* None.

### Related Information

(h) Refer to MCAI DGAC Airworthiness Directive 2002–504(AB), dated October 12, 2002, and Sicma Aero Seat Service Bulletin 92–25–005, revision 3, dated January 17, 2003, for related information.

(i) Contact Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate; 12 New England Executive Park, Burlington, MA 01803; e-mail: *Jeffery.lee@faa.gov*; telephone 781–238–7161; fax 781–238–7170, for more information about this AD.

Issued in Burlington, Massachusetts, on April 2, 2007.

**Peter A. White,**

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

[FR Doc. E7–6478 Filed 4–5–07; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 291**

**RIN 1010–AD17**

## Open and Nondiscriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Minerals Management Service (MMS) is proposing new regulations that would establish a process for a shipper transporting oil or gas production from Federal leases on the Outer Continental Shelf (OCS) to follow if it believes it has been denied open and nondiscriminatory access to pipelines on the OCS. The rule would provide MMS with tools to ensure that pipeline companies provide open and nondiscriminatory access to their pipelines.

**DATES:** MMS will consider all comments received by June 5, 2007. MMS will begin reviewing comments then and may not fully consider comments received after June 5, 2007. Comments on the reporting burden in this rulemaking should be submitted by May 7, 2007.

**ADDRESSES:** Mail or hand-carry comments to: Director, Minerals Management Service, Attention: Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001. You may submit comments by personal or messenger delivery to: 1849 C Street, NW., Room 4223, Washington, DC 20240–0001.

You may also submit comments by any of the following methods. Please use ''Open and Nondiscriminatory Movement'' and the approved Regulatory Identification Number (RIN) 1010–AD17 as an identifier in your message. We will not return materials submitted as part of 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 the RIN in the subject line. Include your name and return address in your e-mail message and mark your message for return receipt.
- *Fax:* 202–208–4891. Identify with the RIN.
- Please submit comments on any aspect of the reporting burden in this proposed rule to the Office of Management and Budget (OMB) either by e-mail (*OIRA_DOCKET@omb.eop.gov*) or by fax (202) 395–6566 directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior. Please provide MMS with a copy of your comments so that we can summarize all written comments and address them in the final rule.

**FOR FURTHER INFORMATION CONTACT:** Scott Ellis, Policy and Appeals Division, at (303) 231–3652, *Fax:* (303) 233–2225, or e-mail at *Scott.Ellis@mms.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 5(e) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331–1356, states that rights-of-way through the submerged lands of the OCS, whether or not such lands are included in a mineral lease maintained or issued pursuant to that subchapter, may be granted by the Secretary of the Interior for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals. The right-of-way may be granted in accordance with such regulations and upon such conditions as may be prescribed by the Secretary of the Interior, including the express condition that oil or gas pipelines shall transport or purchase, without discrimination, oil or natural gas produced from submerged lands or OCS lands. 43 U.S.C. 1334(e).

Section 5(f) of the OCSLA mandates that every permit, license, easement, or right-of-way granted to a pipeline for transportation of oil or gas on or across the OCS must require that the pipeline ''provide open and nondiscriminatory access to both owner and nonowner shippers.'' 43 U.S.C. 1334(f).

The Federal Energy Regulatory Commission (FERC), exercising authority it claimed under the OCSLA, issued regulations requiring companies providing natural gas transportation service to periodically file information with FERC concerning their pricing and service structures. See Order No. 639, FERC Stats. & Regs. (CCH) ¶ 31,097 at 31,514 (April 10, 2000); Order No. 639–A, FERC Stats. & Regs. (CCH) ¶ 31,103 (July 26, 2000). FERC believed that the resulting transparency would enhance competitive and open access to gas transportation. Id. Several of the subject companies sought judicial relief from the orders, alleging that FERC did not have authority under OCSLA to issue the regulations.

On October 10, 2003, the U. S. Court of Appeals for the District of Columbia Circuit, in *Williams Cos.* v. *FERC*, 345 F.3d 910 (D.C. Cir. 2003), found that sections 5(e) and (f) of the OCSLA, 43 U.S.C. 1334(e) and (f), grant the FERC only limited authority to enforce open access rules on the OCS. The court found that enforcement of the requirement to provide open and nondiscriminatory access ''would be at the hands of the obligee of the conditions, the Secretary of the Interior (or possibly other persons that the conditions might specify).'' Id. at 913–914.

Specifically, the Court of Appeals concluded that FERC's role under 43 U.S.C. 1334(e) is essentially limited to what are commonly known as ''ratable take'' orders and capacity expansion orders. According to the court's decision, FERC's authority does not include the regulatory oversight described in FERC Orders 639 and 639–A. As a result, the FERC regulations issued under 18 CFR part 330 are *ultra vires*, and therefore not enforceable. MMS believes the court's decision means that the OCSLA provides the Secretary of the Interior the authority to issue and enforce rules to assure open and nondiscriminatory access to pipelines. 43 U.S.C. 1334(e) and (f)(1)(A).

To determine whether a need exists for regulations to assure open and nondiscriminatory access, MMS issued an Advance Notice of Proposed Rulemaking (ANPRM). See 69 FR 19137 (April 12, 2004). Subsequently, MMS held public meetings in Houston, Washington DC, and New Orleans to hear oral comments. MMS received written comments from 17 respondents. After considering all comments, MMS is proceeding with this proposed rule.

The ANPRM requested discussion and comments on several topics. The commenters generally fell into two groups—shippers/producers and pipelines/transportation service providers. In most instances, these commenter groups submitted opposing views. However, on some issues there was general consensus. Specific topics regarding the issues raised in the ANPRM comments are addressed below in the applicable sections of this proposed rulemaking.

### II. Section-by-Section Analysis, 30 CFR Part 291

MMS proposes to include a new part 291 in its regulations. This part would implement complaint procedures and informal alternative processes to address allegations that a shipper has been denied open and nondiscriminatory access to a pipeline

contrary to sections 5(e) and (f) of the OCSLA.

Pursuant to section 27 of the OCSLA, 43 U.S.C. 1353, and section 342 of the Energy Policy Act of 2005, the United States is entitled to take its royalty in-kind, rather than in value. MMS's Royalty-in-Kind (RIK) production marketing process includes negotiating rates for transportation of the production to market. Some of that transportation will likely occur on pipelines subject to this rulemaking. This may raise the question of whether MMS, as a shipper of RIK production, can fairly decide other shipper's appeals alleging violations of the open and nondiscriminatory access provisions of OCSLA. Furthermore, it also may raise the issue of whether MMS can fairly decide a complaint brought by the RIK division.

The MMS believes that this situation is similar to cases in which the MMS Director decides lessees' appeals of MMS Minerals Revenue Management (MRM) orders. Those appeals are filed under 30 CFR part 290, subpart B. Normally those orders require a company to pay monies. The MMS Director has delegated her authority to decide those appeals to the Associate Director, Policy and Management Improvement (PMI). MRM and PMI are separate programs that both report to the MMS Director. Any decisions regarding complaints on open access would also be decided by PMI. Appellants in those MRM cases may appeal any adverse MMS decision to the Interior Board of Land Appeals (IBLA) under 30 CFR part 290. Appellants' complaints of lack of due process or conflict of interest under this system have never been upheld. See *e.g.* Santa Fe Pacific Railroad Co., 90 IBLA 200, 220 (1986); Davis Exploration, 112 IBLA 254, 260 (1989); Transco Exploration Co. & TXP Operating Co., 110 IBLA 282, 311–12 (1989); W&T Offshore, Inc., 148 IBLA 323, 355–59 (1999).

Appellants under these proposed rules at § 291.112 would be able to avail themselves of the same IBLA review as current MRM appeals. Because the process proposed in this rulemaking is the same as that upheld repeatedly by the Department, the MMS believes that the proposed process will properly protect parties' rights.

*Section 291.100 What Is the Purpose of This Part?*

This section would explain the purposes of this part. This part discusses the procedures for filing a complaint with the MMS Director alleging that a grantee or transporter, as defined below, has denied a shipper of production from the OCS open and nondiscriminatory access to a pipeline. The complaint procedures would include an explanation of the process that MMS would use to determine whether violations of the requirements of the OCSLA have occurred, and to remedy these violations. This part also would provide alternative informal means of reconciling pipeline access disputes through either Hotline-assisted procedures or Alternative Dispute Resolution (ADR).

*Section 291.101 What Definitions Apply to This Part?*

This section would define terms applicable to this part.

MMS would not define ''open access'' or ''nondiscriminatory access'' in this proposed rulemaking. Based upon the comments received in response to the ANPRM and at the public meetings, MMS believes ''open access'' and ''nondiscriminatory access'' are fact-specific terms and their application is best left to be determined during adjudication of individual situations. MMS intends to apply a reasonableness standard when deciding complaints alleging violations of the OCSLA's open and nondiscriminatory access requirements. While a reasonableness standard is inherently broad, it provides the flexibility necessary to address the various and unique situations that may arise. MMS believes that trying to encompass the plethora of circumstances that could present themselves would result in a definition that is unmanageable and would ultimately result in resorting to exceptions to accommodate unforeseen circumstances. Like FERC's ''comparability standard'' used for its electric ''open access'' and ''undue discrimination'' adjudications, MMS's reasonableness standard may include comparability as an element when appropriate. However, MMS is not bound by, and does not intend to necessarily base its determinations of reasonableness on previous FERC decisions.

''Accessory'' would have the same definition as in 30 CFR part 250, subpart J—i.e., a platform, a major subsea manifold, or similar subsea structure attached to a right-of-way (ROW) pipeline to support pump stations, compressors, manifolds, etc. The site used for an accessory is part of the pipeline ROW grant. In the final rule, MMS may prescribe a definition different than that in 30 CFR part 250, subpart J.

''Appurtenance'' would have the same definition as in 30 CFR part 250, subpart J—i.e., equipment, device, apparatus, or other object attached to a horizontal component or riser. Examples include anodes, valves, flanges, fittings, umbilicals, subsea manifolds, templates, pipeline end modules, pipeline end terminals, anode sleds, other sleds, and jumpers (other than jumpers connecting subsea wells to manifolds).

MMS is currently in the process of rewriting its regulations at 30 CFR part 250, subpart J. Those regulations are on a different schedule than this effort. We are proposing to use the same definitions as in 30 CFR part 250, subpart J, in an effort to assure consistency between the two rules and eliminate any ambiguities. In the final rule, MMS may prescribe a definition different than that in 30 CFR part 250, subpart J.

''FERC pipeline'' would mean any pipeline under the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. 717–717z, or the Department of Energy Organization Act, 49 U.S.C. 60502. Although MMS believes it has jurisdiction over such pipelines for purposes of OCSLA's open and nondiscriminatory access requirement (see definition of ''OCSLA pipelines'' discussed below), it is necessary to distinguish FERC pipelines because, as discussed further below, MMS is proposing in this rulemaking to presume that FERC pipelines provide open and nondiscriminatory access.

''Grantee'' would mean any person or assignee to whom MMS has issued a pipeline permit, license, easement, right-of-way, or other grant of authority for transportation of oil or gas on or across the OCS under 30 CFR part 250, subpart J or 43 U.S.C. 1337(p), and any person who has an assignment of a permit, license, easement, right-of-way or other grant of authority, or who has an assignment of any rights subject to any of those grants of authority. MMS is proposing this definition because section 5(f) of the OCSLA requires that ''every permit, license, easement, right-of-way or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline * * * provide open and nondiscriminatory access to both owner and nonowner shippers.'' Therefore, persons to whom MMS has granted such rights, and their assignees, would be grantees under the proposed rule, against whom shippers could file a complaint.

When Congress enacted the Energy Policy Act of 2005, it amended the OCSLA by adding subsection (p) to 43 U.S.C. 1337. (Energy Policy Act of 2005, section 388(a).) MMS has existing authority over all OCS pipelines for

which it has already issued a pipeline permit, license, easement, right-of-way, or other grant of authority for transportation of oil or gas across the OCS. However, subsection 388(a) of the Energy Policy Act of 2005 provides the Department of the Interior with additional authority to grant new pipeline easements or rights-of way on the OCS for transportation of oil or natural gas not already authorized by statute.

''IBLA'' would mean the Interior Board of Land Appeals.

''OCSLA pipeline'' would mean oil or gas pipelines for which MMS has issued a permit, license, easement, right-of-way, or other grant of authority under 30 CFR part 250, subpart J or 43 U.S.C. 1337(p).

Again, this is the definition found in section 5(f) of the OCSLA quoted above. Any such pipelines would be under the jurisdiction of MMS. See also *Williams Cos.* v. *FERC,* 345 F.3d 910, 913–14 (D.C. Cir. 2003), wherein the court found that enforcement of the statutory requirement ''would be at the hands of the obligee of the conditions, the Secretary of the Interior (or possibly other persons that the conditions might specify).''

In response to the ANPRM, MMS received a broad range of comments regarding the Department of the Interior's (DOI) authority under the OCSLA. Both shippers and service providers expressed opinions concerning the actual authority granted to the DOI by the OCSLA. Areas of concern included jurisdiction over production-related facilities on offshore platforms; the regulation of pipelines subject to the Natural Gas Act and the Interstate Commerce Act; the exemption of deepwater ports from the OCSLA's open access requirements; the application of the OCSLA to both oil and gas pipelines; and the spectrum of pipelines that the DOI might regulate and whether any of these pipelines might be exempted from regulation.

MMS believes that its authority to require that pipelines provide open and nondiscriminatory access to both owner and nonowner shippers extends to every pipeline transporting oil or gas on or across the OCS under a permit, license, easement, right-of-way, or other grant of authority, including leases. This includes right-of-way grantees, lessees, pipeline owners, pipeline operators, and all of their assignees, even when those pipelines are also regulated by FERC.

One commenter stated that it believes that pipelines associated with deepwater ports are exempt from the open and nondiscriminatory access requirements of OCSLA. MMS believes that the commenter is correct in part. Our rationale is included in section III of this preamble and discusses why pipelines under the Deepwater Port Act are exempt from the pipeline access provisions of OCSLA.

''Outer Continental Shelf'' would have the same definition as in the OCSLA, 43 U.S.C. 1331—i.e., all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act, 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

''Party'' would mean any person who files a complaint, any person who files an answer, and MMS. We are proposing to include MMS as a party because under this proposed rule, MMS has both enforcement and adjudicatory functions. It is not merely an impartial arbiter. For example, if MMS orders remedial action, MMS will be in the best position to defend that action.

''Person'' would mean an individual, corporation, government entity, partnership, association (including a trust or limited liability company), consortium, or joint venture (when established as a separate entity).

''Pipeline'' would mean the piping, risers, accessories and appurtenances installed for the purpose of transporting oil or gas.

The requirements outlined in this proposed rule are intended to apply only to platforms and facilities directly related to the transportation of oil and gas production. MMS believes that under the plain language of OCSLA, production-related facilities on platforms, which include processing equipment for separating and treating production prior to transportation, are not covered by the open and nondiscriminatory access provisions. Therefore, MMS would only include appurtenances and accessories, as defined above, in the definition of pipeline.

''Serve'' would mean personally delivering a copy of the document to a person, or sending the document by U.S. mail or private delivery services that provide proof of delivery (such as return receipt requested). MMS is proposing that the party submitting a complaint as well as the answerer to a complaint provide a copy of its submittal to the other parties, including MMS. In order to provide proof of service and timely processing, MMS is proposing that correspondence be delivered by U.S. mail or private delivery services that provide proof of delivery (such as return receipt requested). MMS is requesting comments on whether there are other methods of delivery assurance that MMS should consider, including electronic transmission.

''Shipper'' would mean a person who contracts or wants to contract with a grantee or transporter to transport oil or gas through the grantee's or transporter's pipeline.

''Transportation'' would mean, for purposes of this part only, the movement of oil or gas through an OCSLA pipeline.

The ANPRM requested discussion concerning whether, for the purposes of this rule, there is a need to define ''transportation'' and ''gathering'' differently than those terms are defined in MMS royalty valuation regulations or FERC regulations. MMS is specifically proposing to use this definition of ''transportation'' in this part only to avoid any conflict with existing definitions of ''transportation'' or ''gathering'' in MMS's royalty valuation regulations in 30 CFR part 206 or FERC regulations. MMS is not proposing a definition of ''gathering'' in this proposed rule because we believe that MMS has jurisdiction over all pipelines for which it has issued a permit, license, easement, right-of-way, or other grant of authority, whether or not those pipelines would be considered ''gathering'' lines under the FERC's regulations.

''Transporter'' would mean, for purposes of this part only, any person who owns or operates an OCSLA oil or gas pipeline, for the reasons discussed in the definition of ''transportation.''

*Section 291.102 May I Call the MMS Hotline to Informally Resolve an Allegation That Open and Nondiscriminatory Access Was Denied?*

With respect to informal resolution of disputes, comments received in response to the ANPRM generally recommended that MMS implement a light-handed approach. Therefore, MMS is proposing in this section to establish a toll-free Hotline to receive allegations of denial of open and nondiscriminatory access, and to allow shippers and transporters to request ADR in § 291.103.

In the ANPRM, MMS requested discussion concerning the usefulness of a Hotline to informally attempt to resolve shippers' and service providers' concerns regarding perceived instances of open and nondiscriminatory access violations. In general, shippers and service providers endorsed the concept of a Hotline as an informal mechanism for dispute identification and possible resolution. In this proposed rule, MMS

would establish a Hotline to receive informal allegations of denial of open access or discrimination in access in violation of the OCSLA. The Hotline's primary purpose would be to gather facts, evaluate allegations of denial of open access or discrimination in access, and recommend resolution options, including alternative dispute resolution (ADR).

Proposed § 291.102 would allow a shipper to attempt to informally resolve an allegation that it was denied open and nondiscriminatory access by calling the MMS Hotline. You (the shipper) could make the call to the MMS Hotline anonymously, and to the extent permitted by law, the MMS Hotline staff would treat all information it obtains as non-public and confidential. The proposed rule explains that the MMS Hotline staff would informally seek information from you and any grantee or transporter, as appropriate, and would attempt to resolve disputes without formal complaint proceedings. MMS agrees with commenters that the requirements for reporting a dispute using the Hotline should be kept to a minimum. Required information would include the location, pipeline, and a brief explanation of the reason(s) for believing that open access has been denied or that discrimination in access has occurred.

The MMS Hotline staff could provide information to you and give informal oral advice. However, the advice given would not be binding on MMS or DOI. You could terminate your use of the MMS Hotline procedure at any time. If discussions assisted by the MMS Hotline staff were unsuccessful at resolving the matter, you could file a formal complaint under this part after notifying the MMS Hotline that you wish to file a formal complaint.

*Section 291.103 May I Use Alternative Dispute Resolution to Informally Resolve an Allegation That Open and Nondiscriminatory Access Was Denied?*

Another informal option would allow the persons involved in the dispute to agree to non-binding ADR at their expense. ADR may be requested either by calling the MMS Hotline or by contacting the MMS Associate Director for Policy and Management Improvement.

Under the proposed rule, either before or after a complaint is filed, persons involved in a dispute could elect to use one of the following to resolve their dispute:

- A contracted ADR provider;
- The DOI's Office of Collaborative Action and Dispute Resolution (CADR); or
- MMS employees trained in ADR facilitation techniques and certified by the CADR.

ADR facilitation is a service that uniquely benefits the participants by providing an opportunity for the participants to resolve their dispute without incurring substantial litigation costs. Thus, MMS is proposing to require participants in an ADR process to pay their respective shares of all costs and fees associated with any contracted or Departmental ADR provider.

MMS proposes to recover its costs for providing an MMS facilitator. The costs of providing ADR facilitation are readily calculated and tracked. Thus, MMS is proposing to require participants in an ADR process to pay the actual costs of the service on a case-by-case basis. These costs would include both direct and indirect costs. Direct costs include such things as labor, material, and equipment. For example, direct costs would include the costs of the facilitator's time and any other MMS personnel time spent on related secretarial or other tasks. In addition to direct costs, MMS would recover indirect costs, such as rent and overhead. MMS would calculate indirect costs by applying to the direct cost figure an indirect cost ratio already determined in its accounting system.

Authority for cost recovery is provided by the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701. This Act is a general law applicable Government-wide, that provides MMS authority to recover the costs of providing services to the non-federal sector. It requires implementation through rulemaking. There are several policy documents that provide guidance on the process of charging for service costs.

These policy documents are in the Office of Management and Budget (OMB) Circular A–25, ''User Charges,'' and the Department of the Interior Departmental Manual (DM), 330 DM 1.3 & 6.4, ''Cost Recovery'' and ''User Charges.'' The general policy that governs charges for services provided states that a charge ''will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public'' (OMB Circular A–25). The Departmental Manual mirrors this policy (330 DM 1.3 A.).

*Section 291.104 Who May File a Complaint?*

This section would explain who may file a complaint alleging a violation of the requirements of OCSLA section 5(e) and (f) that grantees and transporters provide open and nondiscriminatory access.

MMS would propose to limit the filing of a complaint to any shipper who believes it has been denied open and nondiscriminatory access to an OCSLA pipeline.

MMS intends to defer to the FERC on pipelines under the jurisdiction of the Natural Gas Act or Interstate Commerce Act. This deferral is based on MMS's presumption that because pipelines under the Natural Gas Act and Interstate Commerce Act are regulated by the FERC, ''open access'' and ''nondiscriminatory access'' are being assured. Therefore, MMS would not consider complaints regarding a FERC pipeline that, for example, originates from a lease on the OCS and then transports production onshore to an adjacent state.

MMS welcomes comments on the treatment of pipelines over which FERC exercises its Natural Gas Act or Interstate Commerce Act jurisdiction.

*Section 291.105 What Must a Complaint Contain?*

This section would explain what a complaint must contain. In the ANPRM, MMS requested comments on the type of complaints it might receive. Review of the comments indicated that the types of complaints MMS might receive generally fell into two categories: (1) Rate discrimination and (2) denial of access. It became clear to MMS from the statements at the public meetings and written comments to the ANPRM that each complaint would be very fact-specific. Thus, MMS is not proposing to define categories of complaints it might receive in this proposed rulemaking. MMS would generally define a ''complaint'' to mean a comprehensive written brief stating the legal and factual basis for the allegation that a shipper was denied open and nondiscriminatory access with supporting material.

Paragraph (a) would specify that a complaint must clearly identify the action or inaction which is alleged to violate 43 U.S.C. 1334(e) or (f)(1)(A). For example, in the case of rate discrimination, a shipper would have to allege that it was discriminated against by being charged a higher rate than other similarly situated shippers. General statements of dissatisfaction with high rates would not suffice.

Paragraph (b) would require a complaint to explain how the action or inaction violates 43 U.S.C. 1334(e) or (f)(1)(A)—i.e., how the action or inaction denied the shipper open access or resulted in discrimination in access.

Paragraph (c) would require a complaint to set forth how the action or

inaction affects the complainant's interests. In particular, it would require a complainant to make a good faith effort to quantify the financial impact or burden (if any) created as a result of the action or inaction. It also would require a complaint to explain other impacts of the action or inaction, such as practical, operational, or other non-financial impacts. This would be met by a statement of the harm the denial of open access or discrimination in access caused the shipper.

Paragraph (d) would require a complainant to make a good faith effort to quantify the financial impact or burden (if any) created as a result of the action or inaction.

Paragraph (e) would require that the complaint request specific relief or remedy. For a discussion of some of the specific remedies MMS believes are available, see the discussion of § 291.112 below.

Paragraph (f) would require that a complaint include all documents that support the facts in the complaint. MMS expects a complainant to provide all documents in its possession or which it can otherwise obtain. These documents should include, at a minimum, the relevant contracts and any affidavits necessary to support any particular factual allegations.

In the ANPRM, MMS requested comments on whether interested parties would be more likely to participate in one type of complaint resolution process over another and what circumstances might affect this decision. Based on the responses, as discussed above, MMS is proposing informal processes to address disputes by utilizing an MMS Hotline process or ADR discussed in §§ 291.102–291.103, and a formal process to address complaints described in this section and §§ 209.106–209.114 below.

With respect to the formal process that MMS is proposing, shipper comments generally supported a formal regulatory process to address complaints, and pipeline comments generally did not. Specifically, some pipeline commenters questioned MMS's authority under the OCSLA to issue regulations concerning complaint resolution. Those commenters believe the OCSLA only provides for judicial review of such complaints under 43 U.S.C. 1349–1350.

MMS disagrees. The OCSLA specifically grants the Secretary of the Interior the authority to ''prescribe such rules and regulations as may be necessary to carry out the provisions of [the OCSLA].'' 43 U.S.C. 1334(a). Nothing in section 1349 or section 1350 limits that rulemaking authority. Nor is there anything in section 1334(e) or (f) that exempts those provisions from the general grant of rulemaking authority.

Moreover, based on comments received at the public meetings and in response to the ANPRM, MMS believes a formal process is necessary to assure that its decision to enforce the requirements of the OCSLA will be followed, and to give both parties a reason to participate in the informal process. Without the potential of some consequences, there is no reason for a pipeline owner to participate in a voluntary or an administrative process. Therefore, in §§ 291.105–291.114, MMS is proposing a formal complaint process.

In its consideration of the comments MMS received in response to the ANPRM, MMS recognized other possible formal complaint resolution processes. One of these would be to establish a process similar to the process employed by FERC as set forth in 18 CFR part 385. This process has the advantage of being familiar to both shippers and service providers. However, a FERC-mirrored process would impose new requirements on the DOI, including administrative hearing and appeals requirements. MMS is requesting comments on this or other possible variants.

*Section 291.106 How Do I File a Complaint?*

This section would explain the process for filing a complaint. Paragraph (a) would explain that shippers filing complaints regarding OCSLA pipelines must file complaints with the MMS Director. As discussed above, decisions would be issued by the MMS Policy and Management Improvement office (PMI). Paragraph (b) would provide that the party filing the complaint must pay a nonrefundable processing fee of $7,500 to MMS. Under paragraph (c), you would have to serve your complaint on all parties named in the complaint. See discussion of ''Serve'' in the definitions section above.

Since MMS has not been involved in the processing of complaints of this type, it is interested in comments regarding whether there should be time limits placed on the filing of complaints following an action by a grantee or transporter denying open and nondiscriminatory access. MMS recognizes that the information necessary to effectively answer a complaint may become stale or even non-existent. On the other hand, should the mere passage of time be a limiting factor on whether a shipper can submit a complaint? MMS is requesting comments on this issue and may prescribe a time limit in the final rule.

*Section 291.107 How Do I Answer a Complaint?*

The proposed rule would provide that, after a complaint is filed, those on whom a complaint was served could then submit a formal written answer responding to the allegations in the complaint. Paragraph (a) of this section would explain that if you have been served a complaint under § 291.106(b), you may file an answer to the complaint within 60 days of your receipt of the complaint. If you file your answer after 60 days of your receipt of the complaint, MMS would have discretion not to consider your answer.

The proposed rule would explain in paragraph (b) that for purposes of this part, an answer would mean a comprehensive written brief stating the legal and factual basis refuting the allegation in the complaint that you denied open access or nondiscriminatory access, together with supporting material.

Paragraph (b)(1) would explain that you must attach a copy of the complaint to your answer or reference the assigned MMS docket number. This is to assist MMS in case management.

Paragraph (b)(2) would require the answer to explain why the action or inaction alleged in the complaint does not violate 43 U.S.C. 1334(e) or (f)(1)(A).

Paragraph (b)(3) would require answers to include all documents that support the facts in the answer in possession of, or otherwise obtainable by, the answerer, including, but not limited to, contracts and any affidavits necessary to support factual allegations. MMS is requesting comments on whether there is any other specific information that the answer should include.

Paragraph (b)(4) would require that a copy of the answer be provided to all parties named in the complaint including the complainant.

*Section 291.108 How Do I Pay the Processing Fee?*

This section would provide that you must pay your processing fees to the MMS Policy and Management Improvement office. Under paragraph (a) you would have to pay the processing fee or seek a fee waiver or reduction under § 291.109. The party filing the complaint must pay a nonrefundable processing fee of $7,500 to MMS.

You would be required to pay the nonrefundable processing fee by Electronic Funds Transfer, unless you requested, and MMS authorized, payment by check or an alternative method before the date the processing

fee would be due. The payment would have to include various specified forms of identification in order to properly account for the fee. We request comments on the amount of the processing fee, payment by Electronic Funds Transfer, and what form of identification should be included with fees.

The Department's authority to recover its costs for the processing of complaints involving offshore pipeline access is the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701 (originally codified at 31 U.S.C. 483a) (IOAA). ''Office of Management and Budget (OMB) Circular No. A–25, 58 FR 38144 (adopted 1959; revised July 15, 1993), establishes federal policy regarding user charges under the IOAA.'' Interior Solicitor Opinion M–36987 (December 5, 1996). Further, the Department of the Interior Departmental Manual (DM) mandates cost recovery for special services: ''Departmental policy requires * * * that a charge, which recovers the bureau or office costs, be imposed for services which provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.'' Id. (quoting 346 DM 1.2 A.); Cf. *Federal Power Comm'n* v. *New England Power Co.*, 415 U.S. 345, 350 (1974) (describing the OMB Circular test at 6.a.(4) when no charge should be made as the proper construction of the IOAA). Thus, as part of this proposed rulemaking, we analyzed a previously proposed appeals rule's processing fees (that rule is discussed immediately below) for reasonableness according to the factors in IOAA section 501(b), 31 U.S.C. 9701(b) and the guidance contained in the DM and OMB's Circular No. A–25.

In promulgating regulations for similar processes (to complaints) for appeals of MMS-issued orders, the October 28, 1996, proposed appeals regulation also proposed payment of a processing fee. 61 FR 33607 (1996). Several comments to that proposed appeals rule questioned MMS's authority to impose such fees. A similar concern logically exists for the processing of complaints here, even though the public has not yet had the opportunity to convey their comments. However, in addition to the authority under the IOAA, the United States Court of Appeals for the District of Columbia Circuit has upheld charging processing fees for administrative appeals. *Ayuda, Inc.* v. *Attorney General*, 848 F.2d 1297 (D.C. Cir. 1988). See also, *United Transportation Union-Illinois Legislative Board* v. *Surface Transportation Board*, No. 97–1038, 1997 U.S. App. LEXIS 37560, (D.C. Cir., Nov. 10, 1997) (decision published in table case format without opinion, reaffirming *Ayuda*) (reported in full text format at 1997 U.S. App. LEXIS 37560). In *Ayuda* the Circuit Court held that processing fees for administrative appeals ''are for a 'service or thing of value' [under the IOAA, 31 U.S.C. 9701(a),] which provides the recipients with a special benefit.'' 848 F.2d at 1301.

Unlike the circumstances and precedents established in *Ayuda*, the party seeking compliance (the complainant) under this rule normally is not the regulated party. However, there is no question that the complainant receives a ''special benefit'' from the services performed by MMS in processing the formal complaint. Therefore, this rule proposes that the party filing the complaint will pay the fee. We believe that this arrangement would fairly protect regulated parties from frivolous complaints while it would also ensure compliance with statutory and regulatory requirements. We request comments on the proposed fee.

The four factors in the IOAA are ''(1) fair; and (2) based on—(A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.'' The factors mirror four of the six ''reasonableness factors'' contained in section 304(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734(b). The ''reasonableness factors set out in FLPMA are: (a) ''Actual costs (exclusive of management overhead);'' (b) ''the monetary value of the rights or privileges sought by the applicant;'' (c) ''the efficiency to the government processing involved;'' (d) ''that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant;'' (e) ''the public service provided;'' and (f) ''other factors relevant to determining the reasonableness of the costs.'' Although the factors contained in FLPMA apply only to onshore lands, because of the similarity between the factors used under both statutes and of the open-ended ''other relevant facts'' factor contained in IOAA, the Department believes that using the factors contained in section 304(b) to determine fees is eminently ''fair'' under the authority of the IOAA.

For the reasons set forth above, MMS proposes to implement the IOAA by applying each of the FLPMA factors for complaints processed under this proposed rule. We first estimated the actual cost for processing the complaint, and then considered each of the other FLPMA factors to see if any of them might cause the fee to be set at less than actual cost. We then considered whether any of the remaining factors acted as an enhancing factor that would mitigate against setting the fees at less than actual cost. We then decided the amount of the fee, which cannot be more than the actual processing cost. This method results in fees that are based upon the actual processing costs. Accordingly, for formal pipeline access complaints, the fee is proposed to be set at $7,500 and to be paid by the party filing the complaint.

Factor (a)—Actual Costs

Actual costs means the financial measure of resources expended or used by MMS to process a complaint, including, but not limited to the costs to research and write the MMS Director's decision or take any other relevant action. Actual costs include both direct and indirect costs, exclusive of management overhead. Section 304(b) of FLPMA requires that management overhead be excluded from chargeable costs. Because we are implementing the IOAA by applying the FLPMA factors, management overhead costs are excluded from this analysis.

MMS calculated the direct cost component of the actual costs to process a complaint by totaling agency expenditures for labor, material, and equipment usage. Based on the time it now takes to complete an appeals decision, we estimated the time it would take to perform the various phases of the proposed complaint process. We then multiplied the hours by $80, the average of MMS's personnel, material and equipment usage costs.

MMS calculated the indirect cost component of actual costs by dividing the indirect costs such as rent and overhead associated with this process by the total program cost to arrive at an indirect cost percentage of 18.5%.

MMS then multiplied the direct costs by 18.5% and added that figure to its direct costs to determine its total actual costs. This method of calculating costs is a generally accepted by both the public and private sectors.

Our method of establishing actual costs involved estimating the average cost of processing an individual complaint. We concluded that while it might be possible to track costs and consider the reasonableness factors on a case-by-case basis, doing so would be time consuming and expensive.

MMS's costs to process a complaint under this proposed rule would include the cost to consider the complaint in various phases at MMS. The first phase

would be the MMS Policy and Management Improvement office performing the following functions:

(1) Receiving and date stamping each document;

(2) Reviewing each complaint for completeness;

(3) Docketing the complaint by entering the information into a computer-based tracking system;

(4) Preparing and sending an acknowledgment letter or a denial letter as appropriate;

(5) Preparing a complaint file; and

(6) Reviewing each answer for completeness.

We estimated based on current processes that the average time to complete this phase would be 4 hours.

The next phase would be researching and drafting the Director's decision. We estimated the average staff-hours the Policy and Management Improvement office currently spends on each appeal of MMS orders (discussed above) that results in a decision by the MMS Director to be 100 hours. However, unlike the current process where the appeals analyst only reviews a Statement of Reasons, in this process, the analyst would have to review a complaint and an answer, request additional information, as necessary, and review that information. The Policy and Management Improvement office also anticipates that initially it will be necessary for that Division to consult with MMS's Offshore Minerals Management program and Minerals Revenue Management program as part of the decision-making process. This is because the appeals analyst may need to use those programs' expertise to reach a decision. Accordingly, MMS estimates that the additional time it will need to process at least the first 5 complaints and answers, compared with an appeal of MMS-issued orders, will be 40 hours, for a total of 140 hours for this phase.

Thus, the total estimated average hours for MMS to spend on these phases is 4 hours for the docketing of the complaint and 140 hours for the preparing the MMS Director's decision, for a total of 144 hours per complaint. This estimate is based on current MMS time requirements for completing similar tasks. Using an estimate of $80 per hour based on an average of MMS's personnel, material and equipment-usage costs, we estimate the average direct cost burden for these requests would be $11,520 ($80/hour × 144 hours). MMS's indirect costs for the requests is $2,131 per appeal (18.5% indirect cost rate × $11,520) resulting in total estimated actual costs of $13,561 per average complaint.

Factor (b)—Monetary Value of the Rights and Privileges Sought

The monetary value of rights and privileges sought means the objective worth of a complaint, in financial terms, to the complainant. The value to a complainant is gaining open or nondiscriminatory access to a pipeline if MMS determines that the complainant has been denied open or nondiscriminatory access. See e.g., *Ayuda Inc.* v. *Attorney General*, 848 F.2d 1297 at 1301 (1988) (value of having an incorrect action corrected). However, the monetary value of having MMS remedy a violation of OCSLA's requirement to provide open and nondiscriminatory access will vary depending on the specific facts of each complaint, which MMS cannot accurately estimate in advance of deciding any complaints. Moreover, most complaints will decide a legal question regarding what MMS believes is open access or discrimination that imparts value to both shippers and transporters, so the monetary value is not merely equal to the complainant's alleged loss. Therefore, we rejected the idea of trying to calculate monetary value on a case-by-case basis for purposes of determining whether to increase or decrease the recovery of actual costs based on this factor. Instead, we have determined that consideration of this factor should include an examination of equitable considerations related to monetary value, rather than precise figures. However, given the nature of these complaints, we believe the monetary value to complainants of gaining access or having discriminatory actions cease would be great.

A major equitable consideration is whether the level of cost reimbursement could burden the complainant to such an extent that the complaint would actually end up being of no monetary value to the complainant whatsoever. However, because we are providing a mechanism for fee waiver or reduction, and believe the monetary value of the relief sought would be considerably greater than the cost of filing a complaint in a vast majority of cases, we decided that this factor should not cause fees to be set below actual costs.

Factor (c)—Efficiency to the Government Processing Involved

Efficiency to the Government processing means the ability of the United States to process a complaint with a minimum of waste, expense, and effort. Implicit in this factor is the establishment of a cost recovery process that does not cost more to operate than is necessary, and does not unduly increase the costs to be recovered. As noted in the above section on actual costs, we have estimated the cost to the government for the complaint process proposed in this rulemaking. However, we believe it would be inefficient to determine an adjustment factor to increase or decrease the recovery of actual costs on a case-by-case basis.

The procedures that we would use to process a complaint would be based on standardized steps for similar MMS transactions in order to eliminate duplication and extraneous procedures. However, some procedures would require processes in addition to those used under the current appeals process. These additional processes were accounted for under factor (a) above.

Factor (d)—Cost Incurred for the Benefit of the General Public Interest

The cost incurred for the benefit of the general public interest (public benefit) means funds the United States expends, in connection with the processing of a complaint, for studies or data collection determined to have value or utility to the United States or the general public separate and apart from the document processing. It is important to note that this factor addresses funds expended in connection with a complaint. There is another level of public benefit that includes studies which we are required, by statute or regulation, to perform regardless of whether a complaint is received. The costs of such studies are excluded from any cost recovery calculations from the outset. Therefore, no reduction from costs recovered is necessary in relation to these studies.

We concluded that the processing of a complaint would not as a rule produce studies or data collection that might benefit the public to any appreciable degree. Therefore, any possible benefits of such studies to the public are balanced by their possible benefits to the complainant. Accordingly, we made no adjustment to the fee recovered based on this factor.

Factor (e)—Public Service Provided

Public service provided means direct benefits with significant public value that are expected as a result of a complaint. This factor is thus concerned with the benefit resulting from the ultimate decision in the complaint, while the previous factor related to the benefits of the document processing itself. Deciding a complaint provides a public service because the primary function of the complaint process is to ensure open and nondiscriminatory access as mandated by Congress in

sections 1334 (e) and (f)(1)(A). The value of the benefit to the public is great because ensuring open and nondiscriminatory access encourages production in new fields and prevents shut-in of existing wells. These in turn would further Congress' stated purpose of expeditious and orderly development of the OCS, 43 U.S.C. 1332, and the requirement that lessees diligently produce oil and gas from the lease. 43 U.S.C. 1337(b)(4).

Furthermore, comments received from the County of Santa Barbara stated that requiring open and nondiscriminatory access may decrease environmental degradation. ''Santa Barbara's policies * * * require equitable and nondiscriminatory access to onshore segments of pipelines that carry offshore oil and gas * * *. Application of these policies since the mid-1980's has substantially reduced the environmental impacts that would occur if every offshore operator installed their individual set of pipelines * * *.'' We agree. Therefore, we believe there would be a public benefit from avoiding potential environmental degradation. For these reasons, we decided that it was reasonable to set fees below actual costs on the basis of this factor.

Factor (f)—Other Factors

The final reasonableness factor is other factors relevant to determining the reasonableness of the costs. Under this factor, we considered fees that other government entities charge for processing similar complaints (see October 28, 1996, proposed rulemaking, 61 FR at 55609). Also, the paucity of anticipated complaints skews the programmatic costs for individual complaints. As discussed above, it will take the Policy and Management Improvement office an additional 40 hours to process at least the first 5 complaints and answers than to process an appeal of a Minerals Revenue Management program order. However, after the Policy and Management Improvement office develops the expertise and case law, the time necessary to process a complaint should decrease. Accordingly, the first 5 complainants would bear the entire costs of the extra time necessary for the Policy and Management Improvement office to develop the expertise. We believe that it is more reasonable to spread those costs out over time, and, thus, reasonable to set fees below actual costs based on this factor.

After considering all of the reasonableness factors, we concluded that the factors of public service (e) and other factors (f) make it reasonable to set the fees for filing a complaint at $7,500 instead of at the actual costs. None of the other factors mitigate against setting the fees at less than actual costs. Moreover, because the proposed fee of $7,500 would meet the reasonableness factors of FLPMA, they would also be fair under the IOAA.

We invite comments concerning the proposed processing fee. Specifically, the MMS is requesting comments on the effect the proposed fees could have on the filing of complaints.

*Section 291.109 Can I Ask for a Reduced Processing Fee?*

This section would allow complainants to request a fee waiver or reduction. We invite comments regarding the advisability of including procedures in the proposed rule for granting fee waivers or reductions. We have included fee waiver and reduction provisions because we believe that the payment of the $7,500 fee may cause undue hardship on small independent oil and gas producers/shippers and thus impede their access to the complaint process.

While waiver procedures for complaints and appeals exist in some other agencies, they may not be applicable in instances such as this where there is an informal processing-fee free Hotline alternative and we have already reduced the fee to half of our actual costs. For example, waiver provisions in Department of Transportation Surface Transportation Board regulations apply to a fee schedule that includes fees ranging up to $23,300 for the filing of a formal complaint 49 CFR 1002.2(c)–(f). See United Transportation Union-Illinois Legislative Board versus Surface Transportation Board, No. 97–1038, 1997 U.S. App. LEXIS 37560, (D.C. Cir. Nov. 10, 1997) (upheld a Surface Transportation Board fee for handling appeals, in part, because it ''provided a waiver mechanism for fees that would cause undue hardship''). Therefore, we invite comment on whether we should retain a fee waiver or reduction provision.

*Section 291.110 Who May MMS Require To Produce Additional Information?*

The ANPRM requested comments on whether MMS could achieve its mandate of assuring open and nondiscriminatory access in the absence of routine information collection and the dissemination of some or all of that information. The comments received varied widely. Some commenters stated that the OCSLA does not provide MMS with the authority to require reporting. Others believed that MMS should implement the same type of information collection that the FERC had mandated in Orders 639 and 639–A.

MMS believes that without knowing the specifics of the number and type of instances of violations of the open and nondiscriminatory access requirements, the routine submittal of information is not justified at this time. In addition, MMS is not proposing to include reporting requirements because, if a shipper alleges discrimination in a complaint against a pipeline, it will need to provide documentation supporting that allegation. Likewise, it will be in a pipeline's best interest to provide documentation refuting the shipper's allegations of discrimination. Finally, because MMS is not defining ''open access'' or ''nondiscriminatory access'' in the rulemaking, and because MMS believes complaints extend beyond rate issues, MMS anticipates that it will not need the majority of information FERC was gathering under Orders 639 and 639–A. Therefore, in the proposed rule, MMS does not propose any reporting requirements by service providers operating pipelines on the OCS similar to what the FERC imposed in Orders 639 and 639–A.

Rather, in paragraph (a) of this section, the proposed rule would allow MMS to require any lessee, operator of a lease or unit, shipper, grantee, or transporter (whether it is a shipper or not) to provide additional information that MMS believes is necessary to make a decision on whether open access or nondiscriminatory access was denied. MMS welcomes comments on whether it should be able to require information from persons who are not parties.

Paragraph (b) would provide for enforcement of such requests if a party fails to provide additional information MMS requests under paragraph (a). Enforcement could include the assessment of civil penalties under 30 CFR part 250, subpart N, and dismissal of a complaint or factual findings adverse to a party on factual issues to which the information sought is relevant.

Paragraph (c) would provide for enforcement of such requests if a lessee, operator of a lease or unit, shipper, grantee, or transporter, that is not a party fails to provide additional information MMS requests under paragraph (a). Enforcement may result in the assessment of civil penalties under 30 CFR part 250, subpart N.

*Section 291.111 How May I Request That MMS Treat Information I Provide as Confidential?*

This section would allow any person who provides documents to MMS under

this part to claim that some or all of the information contained in the particular document is confidential. Confidentiality under this section would include documents that are exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or protected by the Trade Secrets Act, 18 U.S.C. 1905, or otherwise exempt by law from public disclosure.

In the ANPRM, MMS requested comments on how it should treat any collected information. MMS believes that in order to encourage participation in informal complaints, it is necessary to treat all submitted information as confidential to the extent allowed by law. Conversations with FERC reinforced this belief. With respect to information submitted during the formal complaint resolution process, MMS is proposing the submittal of complete and redacted versions of information in order to maintain the confidentiality of information when appropriate if a party requests that information be kept confidential and explains why it should be treated as confidential.

MMS is proposing to retain the right to determine whether any claim of confidentiality is required by law. MMS would notify the person claiming confidentiality of its determination and to the extent permitted by law, would provide an opportunity to respond prior to any public disclosure.

*Section 291.112 How Will MMS Decide Whether a Grantee or Transporter Has Provided Open and Nondiscriminatory Access?*

The MMS Director would review the pleadings and issue a decision including appropriate remedial actions as discussed below.

MMS's Royalty-in-Kind (RIK) production marketing process includes negotiating rates for transportation. Some of that transportation will likely occur on pipelines subject to this rulemaking and presents the possibility that the RIK division may file a complaint. As discussed above, this raises the question of whether MMS, as a shipper of RIK production, can fairly decide other shipper's appeals alleging violations of the open and nondiscriminatory access provisions of OCSLA. See the discussion in Section II that concludes that MMS can fairly decide other shipper's appeals.

*Section 291.113 What Actions May MMS Take To Remedy Denial of Open and Nondiscriminatory Access?*

If the MMS Director decides under § 291.111 that the grantee or transporter has not provided open and nondiscriminatory access, then the decision would describe the actions MMS would take to remedy the denial of access. Actions MMS could take include ordering grantees and transporters to provide open and nondiscriminatory access to the complainant and assessing civil penalties of up to $10,000 per day under 30 CFR part 250, subpart N, for failure to provide open and nondiscriminatory access. Penalties would begin to accrue 60 days after the grantee or transporter received the order to provide access under this paragraph. The proposal also would allow MMS to request that the Department of Justice institute civil actions for a temporary restraining order, injunction, or other appropriate remedy to enforce the open and nondiscriminatory access requirements of 43 U.S.C. 1334(e) and (f)(1)(A), or to forfeit the right-of-way grant under 43 U.S.C. 1334(e).

*Section 291.114 How Do I Appeal to the IBLA?*

MMS is proposing to allow any party adversely affected by a final decision of the MMS Director under this part to appeal to IBLA under the procedures provided in 43 CFR part 4, subpart E.

*Section 291.115 How Do I Exhaust Administrative Remedies?*

MMS is proposing to allow appeals to IBLA. If the MMS Director issues a decision, and does not expressly make the decision effective upon its issuance, then a party would need to appeal the decision to IBLA in order to exhaust administrative remedies. On the other hand, if the MMS Director expressly makes the decision effective upon issuance or if the Assistant Secretary for Land and Minerals Management issues or concurs in a decision under this part, then that is the Department's final decision. No further appeals would be needed to exhaust your administrative remedies, and none would be available.

## III. Jurisdiction Under the Deepwater Port Act

The Deepwater Port Act of 1974 defines a deepwater port as including ''all components and equipment, *including pipelines*, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark.'' 33 U.S.C. 1502(9) (emphasis added). Under 33 U.S.C. 1503(b), the Secretary of Transportation ''issue[s] a license for the ownership, construction, and operation of a deepwater port''—including pipelines. Although the Secretary of the Interior, through MMS, issues a right-of-way across the seabed for a pipeline that transports production from a deepwater port, the Secretary of Transportation authorizes the construction and regulates the operation of the pipeline.

However, the definition of ''deepwater port'' with respect to natural gas specifically limits the pipelines and other facilities to those ''proposed or approved for construction and operation as part of a deepwater port, * * * and do[es] not include interconnecting facilities.'' 33 U.S.C. 1502(9)(C). Consequently, only those dedicated pipeline segments constructed and operated solely as part of the deepwater port facility would be exempt from OCSLA jurisdiction.

The Deepwater Port Act further specifies what common carrier obligations do and do not apply to pipelines that are part of deepwater ports. Section 1507 provides in relevant part:

(a) Status of deepwater ports and storage facilities. A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, United States Code [*49 U.S.C. § 10101* et seq.], *and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port* with respect to which its license is issued, except as provided by subsection (b) of this section.

(b) Discrimination prohibition; exceptions. A licensee is not discriminating under this section and is not subject to common carrier regulations under subsection (a) of this section when that licensee—

(1) Is subject to effective competition for the transportation of oil from alternative transportation systems; and

(2) Sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

(c) Enforcement, suspension, or termination proceedings. When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.

(d) Managed access. *Subsections (a) and (b) shall not apply to deepwater ports for natural gas. A licensee of a deepwater port for natural gas, or an affiliate thereof, may exclusively utilize the entire capacity of the deepwater port and storage facilities for the*

*acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates. The licensee may make unused capacity of the deepwater port and storage facilities available to other persons, pursuant to reasonable terms and conditions imposed by the licensee, if such use does not otherwise interfere in any way with the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliate.*

33 U.S.C. 1507 (emphasis added). In other words, if a deepwater port accepts crude oil, it must operate as a common carrier and provide nondiscriminatory access to all crude oil delivered to the port unless the conditions in subsection (b) are met. If a deepwater port is required to operate as a common carrier for crude oil and is not meeting that obligation, enforcement of that obligation rests with the Secretary of Transportation and FERC under subsection (c), not the Secretary of the Interior.

If a deepwater port is a natural gas port—i.e., a liquefied natural gas (LNG) port—it is not required to operate as a common carrier and is not required to provide non-discriminatory access to other parties. By the express terms of subsection (d), the licensee of the port and its affiliates may use the port (and, therefore, the pipeline) exclusively. The licensee may also make any unused capacity available to others if it chooses to do so, ''pursuant to reasonable terms and conditions *imposed by the licensee*'' (emphasis added), not by the Secretary of the Interior. This provision does not convert the deepwater port or its pipeline into a common carrier if it chooses to make capacity available to others.

These express specific provisions control over the general provision in the OCSLA at 43 U.S.C. 1334(f)(1)(A) that pipelines on or across the OCS provide open and non-discriminatory access to both owner and non-owner shippers.

The Deepwater Port Act does contemplate the possibility that pipelines that are part of deepwater ports may be used to transport production that originates on the OCS. The congressional declaration of policy in the Deepwater Port Act, at 33 U.S.C. 1501, provides that the congressional purposes in enacting the statute include:

(5) Promote the construction and operation of deepwater ports as a safe and effective means of importing oil or natural gas into the United States *and transporting oil or natural gas from the outer continental shelf* while minimizing tanker traffic and the risks attendant thereto; and

(6) *Promote oil or natural gas production on the outer continental shelf by affording an economic and safe means of transportation of outer continental shelf oil or natural gas to the United States mainland.* (Emphasis added.)

Thus, Congress was aware when it enacted the Deepwater Port Act and subsequent amendments that production from outside the OCS could be brought in to land through a port located on the OCS. It was also aware that some production from the OCS might be transported through pipelines that are part of the deepwater port facility. In enacting the common carrier provisions and exclusions in that statute, Congress distinguished between products (oil versus gas), but did not distinguish between production brought in from outside the OCS and production from the OCS. Had Congress intended to apply the general requirements of 43 U.S.C. 1334(f)(1)(A) to that portion of production transported through a deepwater port's pipeline that originates from the OCS, notwithstanding the express specific provisions in the Deepwater Port Act, it presumably would have included specific language stating that intent.

It is possible that a pipeline constructed as part of a deepwater port may connect the deepwater port with an existing OCS pipeline that is subject to MMS's jurisdiction and the open and nondiscriminatory access requirements of 43 U.S.C. 1334(f)(1)(A) implemented in this rule. In such a case, connection with the OCS pipeline would not make segments of the OCS pipeline downstream of the interconnect point exempt from open and nondiscriminatory access requirements. MMS does not believe that Congress intended in the Deepwater Port Act to override the Secretary of the Interior's authority in this context. The provisions of this proposed rule would apply to all segments of the OCS pipeline, including those downstream of the interconnect point. They would not apply to the pipeline connecting the deepwater port with the OCS pipeline.

## IV. Requested Comments Summary

MMS has specifically requested comments on various topics in the preamble. Those specific requests are summarized here:

1. Whether MMS should consider other methods of delivery assurance, e.g., electronic transmission, to satisfy parties' complaint and answer notification requirements.

2. Whether MMS should use a formal complaint resolution method other than that proposed.

3. Whether MMS's proposed treatment of OCSLA pipelines over which FERC exercises its Natural Gas Act or Interstate Commerce Act jurisdiction is adequate.

4. Whether MMS should impose a time limit on the filing of complaints.

5. Whether an answer in response to a complaint should include specific information other than that required by the proposed rule.

6. Whether the amount of the processing fee is fair, whether the payment by electronic funds transfer is feasible, and what form of identification should be used to submit fees to MMS.

7. Whether the proposed processing fees will materially affect the filing of complaints and whether the value of using the complaints process to complainants, transporters, and others of using the complaint process is fairly presented.

8. Whether processing fee waiver and reduction provisions should be retained.

9. Whether MMS should obtain information from persons who are not parties to a complaint.

10. Whether MMS should automatically stay each decision pending an appeal to the IBLA.

## V. Procedural Matters

### *Public Comment*

MMS's practice is to make comments, including the names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home addresses, etc. But if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information that demonstrates that disclosure would constitute a clearly unwarranted invasion of personal privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documented circumstances, this information will be released. MMS will not consider anonymous comments. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### *Regulatory Planning and Review (Executive Order 12866)*

This is not a significant rule under Executive Order 12866 and does not require review by the Office of Management and Budget (OMB).

a. The proposed rule would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. From the inception of Order 639, FERC received a few formal complaints and approximately ten informal hotline complaints regarding open and nondiscriminatory access. Based upon the number of OCSLA open and nondiscriminatory complaints FERC received, and the comments MMS received at the public workshops and to the ANPRM, MMS expects to receive approximately five formal complaints and fifty calls to the MMS Hotline in the first year, and fewer in subsequent years once the regulations have been applied in a series of cases. MMS conducted an economic analysis to estimate the net benefits from implementation of the proposed regulations. An analytic baseline was established to represent the current state of shipper and pipeline transactions on the OCS. Projected costs and benefits from the proposed complaint program are incremental with respect to the baseline. Results from the analysis indicate that net benefits to shippers/producers and the public could range from $0.12 million to $0.59 million, with a most likely estimate of $0.23 million for the projected number of complaints in the first year and fewer in subsequent years. MMS decisions favorable to complainants would increase revenue received by shippers/producers, and royalty payments would also increase. These benefits would be offset by the cost of compliance with the rule, e.g., ADR, complaint filings, litigation, etc., and a decrease in tariff revenue paid to pipelines. Baseline benefits to shippers/producers and the public, before subtracting compliance costs and decreases in tariff revenue, would be within the range of $4.6 million to $28.5 million, with a most likely estimate of $14.0 million.

The proposed rule would not create an adverse effect upon the ability of the United States offshore oil and gas industry to compete in the world marketplace, nor would the proposal adversely affect investment or employment factors locally. As noted during the public meetings held by MMS, it appears that the industry has been able to resolve all but a very few of the type of complaints which the proposed rule would address through the normal course of finding, developing and marketing resources on the OCS. Because of this history, MMS concludes that the economic effects of the rule would not be significant. In disputed cases, intervention by MMS could result in the shifting of costs and revenue among the parties. Business transactions could be altered in a way that ensures shippers can move production. Conceptually, the economy would benefit if additional reserves are recovered and sold. Regardless, MMS concludes that direct annual costs to industry for the entire proposed rule would not exceed the $100 million threshold.

b. This proposed rule would not create inconsistencies with other agencies' actions. The rule does not change the relationships of the OCS oil and gas leasing program with other agencies. These relationships are usually encompassed in agreements and memoranda of understanding that would not change with this proposed rule. By deferring to the FERC when FERC has retained and exercised jurisdiction, MMS has structured the proposed rule to ensure that it would not create any inconsistencies with FERC's actions.

c. This proposed rule would not affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule would simply include requirements for the filing and processing of complaints concerning open and nondiscriminatory access on the OCS.

d. This rule would not raise novel legal or policy issues. The rule would merely set out the rules for filing complaints, investigating, and adjudicating matters related to the requirements for pipelines to offer open and nondiscriminatory transportation of OCS production.

*Regulatory Flexibility (RF) Act*

MMS has determined that this proposed rule would not have a significant economic effect on a substantial number of small entities. While the rule would affect some small entities, the economic effects of the rule would not be significant.

The regulated community for this proposal consists of companies specializing in leasing, developing, and operating offshore oil and gas properties, and providing pipeline services. Of the small companies to be affected by the proposed rule, almost all producers that ship production on or across the OCS are represented by the North American Industry Classification System (NAICS) code 211111 (crude petroleum and natural gas extraction). Within this group, approximately 90 of 130 are small companies. Those small companies providing pipeline transportation are represented primarily by NAICS codes 486110 (crude petroleum pipelines) and 486210 (natural gas transmission pipelines). Within this second group, approximately 180 of 220 are small companies.

This proposed rule is unlikely to impose a net cost on any small company shipping production, because the option to file a complaint is a discretionary act and a company is unlikely to file a complaint unless it perceives the benefits will exceed the cost. In the event that a small pipeline company is found to be in violation of the open and non-discriminatory access provisions of OCSLA, the violation would presumably be resolved by some adjustment of the business relationship between the parties to the dispute. In these cases, the producers and shippers would benefit financially, and the public could benefit from conservation of reserves. On the other hand, pipelines would be obliged to accept less profitable business arrangements.

If the fraction of small to large companies providing pipeline services is applied to the number of complaints expected in the first year, MMS estimates 4–5 cases would be processed that could affect the profitability of pipeline service providers fitting the small company criteria. However, any relief provided to a shipper would bring the rates to where they should have been under the OCSLA. Thus, there would not be a significant impact on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The proposed rule will not cause the business practices of any of these companies to change.

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 enforcement actions of MMS, call toll-free 1–888–REG–FAIR (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 Department of the Interior.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. The

proposed rule would not change significantly the cost of transporting oil or gas on pipelines on the OCS. Indeed, the effect of the proposed rule should be to decrease transportation costs overall. Based on economic analysis:

a. This rule would not have an annual effect on the economy of $100 million or more. As indicated in MMS's analysis, the economic impact to industry would be minimal. The proposed rule would have a minor economic effect on the offshore oil and gas industries.

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

c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*Paperwork Reduction Act (PRA) of 1995*

The proposed rule would require a new information collection (IC), and MMS is submitting an IC request to OMB for review and approval under section 3507(d) of the PRA. The title of the collection of information is ''30 CFR Part 291, Subpart A, Open and Nondiscriminatory Movement of Oil and Gas.'' The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves the collection of information and assigns a control number, you would not be required to respond.

There are approximately 220 potential respondents. The frequency of reporting and recordkeeping is generally on occasion. Responses are required to obtain or retain benefits. The IC does not include questions of a sensitive nature. MMS will protect information considered proprietary according to the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), as well as documents protected by the Trade Secrets Act, 18 U.S.C. 1905.

The rule proposes to implement complaint procedures to address allegations that a shipper has been denied open and nondiscriminatory access to a pipeline as sections 5(e) and (f) of the OCSLA require. MMS intends to use the submitted information to determine whether the shipper has been denied open and nondiscriminatory access. The complaint information will be provided to the alleged offending party. Informal resolution is also provided as an option.

Shippers submitting a complaint will be asked to identify the alleged action or inaction, explain how the action violates 43 U.S.C. 1334(e) or (f) and how the action affects their business interests, state the relief or remedy requested, and provide supporting documentation.

MMS estimates that the total annual reporting and recordkeeping ''hour'' burden for the rule is 255 hours. See the table below for a breakdown of requirements and hour burdens.

| Citation 30 CFR 291 | Reporting and recordkeeping requirement | Hour burden | Average number annual responses | Annual burden hours |
|---|---|---|---|---|
| 105, 106, 108, 110 | Submit complaint (with fee) to MMS and affected parties. Request confidential treatment and respond to MMS decision. | 50 | 5 | 250 |
| 108(a) | Request alternative payment method | 0.5 | 2 | 1 |
| 108(b) | Request waiver or reduction of fee | 1 | 4 | 4 |
| 107 | Submit answer to a complaint | Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4). | | 0 |
| 109 | Submit required information for MMS to make a decision. | | | |
| 113, 114(a) | Submit appeal on MMS final decision. | | | |
| Total Burden | | | 11 | 255 |

The rule (§§ 291.106(b) and 108) also proposes that shippers pay a nonrefundable fee of $7,500 when filing a complaint with MMS. The fee is required to recover the Federal Government's processing costs. Therefore, MMS estimates that the annual non-hour cost burden for this rulemaking is $37,500, based on five complaints per year.

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 cost burdens in the proposed rule. You may submit your comments either by e-mail (*OIRA_DOCKET@omb.eop.gov*) or by fax (202) 395–6566 directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior. Please provide MMS with a copy of your comments so that we can summarize all written comments and address them in the final rule. Refer to the Addresses section for MMS mailing information.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

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?

*Federalism (Executive Order 13132)*

According to Executive Order 13132, the proposed rule would not have significant Federalism effects. The proposed rule would not change the role or responsibilities of Federal, State, and local governmental entities. The proposed rule does not relate to the structure and role of States and would

not have direct, substantive, or significant effects on States. A Federalism Assessment is not required.

*Takings (Executive Order 12630)*

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

*Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. MMS has drafted this rule in plain language and has consulted with the Department of the Interior's Office of the Solicitor throughout the rulemaking process.

*Unfunded Mandates Reform Act (UMRA) of 1995*

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector would be far below the $100 million threshold for any year that was established by UMRA.

*National Environmental Policy Act (NEPA) of 1969*

MMS has analyzed this rule according to the criteria of NEPA and 516 Departmental Manual 6, Appendix 10.4C, ''issuance and/or modification of regulations.'' MMS has reviewed the criteria of the Categorical Exclusion Review (CER) for this action and concluded: ''The proposed rulemaking does not represent an exception to the established criteria for categorical exclusion, and its impacts are limited to administrative, economic, or technological effects . . . . Therefore, preparation of an environmental document will not be required, and further documentation of this CER is not required.''

*Clarity of This Regulation*

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 rule clearly stated?

2. Does the rule contain technical language or jargon that interferes with its clarity?

3. Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

4. Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? What else can be done to make the rule easier to understand?

Send a copy of any comments on how this rule could be made 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.* Please use ''Open and Nondiscriminatory Movement'' and the approved Regulatory Identification Number (RIN) 1010–AD17 as an identifier in your message.

*Effects on the Nation's Energy Supply (Executive Order 13211)*

In accordance with Executive Order 13211, this proposed regulation would not have a significant adverse effect on the nation's energy supply, distribution, or use. The regulations would provide for a complaint process to ensure open and nondiscriminatory access on the OCS. If implemented, the regulation would not impact significantly the way industry does business, and accordingly should not affect their approach to energy development or marketing. Nor would the proposed rule otherwise significantly impact energy supply, distribution, or use.

*Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

In accordance with Executive Order 13175, this proposed rule does not have tribal implications that would impose substantial direct compliance costs on Indian tribal governments.

**List of Subjects in 30 CFR Part 291**

Administrative practice and procedures, Alternative dispute resolution, Complaints, Continental shelf, Government contracts, Hotline, Natural gas, Penalties, Petroleum, Pipelines, Public lands—mineral resources, Public Lands—rights-of-way, Remedies, Reporting requirements, and Transportation.

Dated: January 31, 2007.

**C. Stephen Allred,**

*Assistant Secretary—Land and Minerals Management.*

For the reasons set out in the preamble, MMS proposes to add to title 30 of the Code of Federal Regulations a new Part 291 as follows:

**TITLE 30—MINERAL RESOURCES**

## PART 291—OPEN AND NONDISCRIMINATORY ACCESS TO OIL AND GAS PIPELINES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT

Sec.

291.100 What is the purpose of this part?
291.101 What definitions apply to this part?
291.102 May I call the MMS Hotline to informally resolve an allegation that open and nondiscriminatory access was denied?
291.103 May I use alternative dispute resolution to informally resolve an allegation that open and nondiscriminatory access was denied?
291.104 Who may file a complaint?
291.105 What must a complaint contain?
291.106 How do I file a complaint?
291.107 How do I answer a complaint?
291.108 How do I pay the processing fee?
291.109 May I ask for a fee waiver or a reduced processing fee?
291.110 Who may MMS require to produce information?
291.111 How do I request that MMS treat the information I provide as confidential?
291.112 How will MMS decide whether a grantee or transporter has provided open and nondiscriminatory access?
291.113 What actions may MMS take to remedy denial of open and nondiscriminatory access?
291.114 How do I appeal to the IBLA?
291.115 How do I exhaust administrative remedies?

**Authority:** 43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701, section 342 of the Energy Policy Act of 2005.

### § 291.100 What is the purpose of this part?

This part:

(a) Explains the procedures for filing a complaint with the Director, Minerals Management Service (MMS) alleging that a grantee or transporter has denied a shipper of production from the Outer Continental Shelf (OCS) open and nondiscriminatory access to a pipeline;

(b) Explains the procedures MMS will employ to determine whether violations of the requirements of the Outer Continental Shelf Lands Act (OCSLA) have occurred, and to remedy any violations; and

(c) Provides for alternative informal means of resolving pipeline access disputes through either Hotline-assisted procedures or Alternative Dispute Resolution.

### § 291.101 What definitions apply to this part?

*Accessory* means a platform, a major subsea manifold, or similar subsea structure attached to a right-of-way (ROW) pipeline to support pump stations, compressors, manifolds, etc.

The site used for an accessory is part of the pipeline ROW grant.

*Appurtenance* means equipment, device, apparatus, or other object attached to a horizontal component or riser. Examples include anodes, valves, flanges, fittings, umbilicals, subsea manifolds, templates, pipeline end modules, pipeline end terminals, anode sleds, other sleds, and jumpers (other than jumpers connecting subsea wells to manifolds).

*FERC pipeline* means any pipeline within the jurisdiction of the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act, 15 U.S.C. 717–717z, or the Interstate Commerce Act, 42 U.S.C. 7172(a) and (b).

*Grantee* means any person to whom MMS has issued an oil or gas pipeline permit, license, easement, right-of-way, or other grant of authority for transportation on or across the OCS under 30 CFR part 250, subpart J or 43 U.S.C. 1337(p), and any person who has an assignment of a permit, license, easement, right-of-way or other grant of authority, or who has an assignment of any rights subject to any of those grants of authority under 30 CFR part 250, subpart J or 43 U.S.C. 1337(p).

*IBLA* means the Interior Board of Land Appeals.

*OCSLA pipeline* means any oil or gas pipeline for which MMS has issued a permit, license, easement, right-of-way, or other grant of authority.

*Outer Continental Shelf* means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

*Party* means any person who files a complaint, any person who files an answer, and MMS.

*Person* means an individual, corporation, government entity, partnership, association (including a trust or limited liability company), consortium, or joint venture (when established as a separate entity).

*Pipeline* is the piping, risers, accessories and appurtenances installed for transportation of oil and gas.

*Serve* means personally delivering a copy of a document to a person, or sending a document by U.S. mail or private delivery services that provide proof of delivery (such as return receipt requested) to a person.

*Shipper* means a person who contracts or wants to contract with a grantee or transporter to transport oil or gas through the grantee's or transporter's pipeline.

*Transportation* means, for purposes of this part only, the movement of oil or gas through an OCSLA pipeline.

*Transporter* means, for purposes of this part only, any person who owns or operates an OCSLA oil or gas pipeline.

**§ 291.102 May I call the MMS Hotline to informally resolve an allegation that open and nondiscriminatory access was denied?**

Before filing a complaint under § 291.106, you may attempt to informally resolve an allegation concerning open and nondiscriminatory access by calling the toll free MMS Hotline at [THE ACTUAL PHONE NUMBER WILL BE IN FINAL RULE].

(a) MMS Hotline staff will informally seek information needed to resolve the dispute. MMS Hotline staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline staff will not attempt to resolve matters that are before MMS or FERC in docketed proceedings.

(b) MMS Hotline staff may provide information to you and give informal oral advice. The advice given is not binding on MMS, the Department of the Interior (DOI), or any other person.

(c) To the extent permitted by law, the MMS Hotline staff will treat all information it obtains as non-public and confidential.

(d) You may call the MMS Hotline anonymously.

(e) If you contact the MMS Hotline, you may file a complaint under this part if discussions assisted by MMS Hotline staff are unsuccessful at resolving the matter.

(f) You may terminate use of the MMS Hotline procedure at any time.

**§ 291.103 May I use Alternative Dispute Resolution to informally resolve an allegation that open and nondiscriminatory access was denied?**

You may ask to use Alternative Dispute Resolution (ADR) either before or after you file a complaint. To make a request, call the MMS Hotline [THE ACTUAL PHONE NUMBER WILL BE IN FINAL RULE] or write to us at the following address: Associate Director, Policy and Management Improvement, Minerals Management Service, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001.

(a) You may request that ADR be administered by:

(1) A contracted ADR provider agreed to by all persons;

(2) The Department's Office of Collaborative Action and Dispute Resolution (CADR); or

(3) MMS staff trained in ADR and certified by the CADR.

(b) Each party must pay its respective share of all costs and fees associated with any contracted or Departmental ADR provider. For purposes of this section, MMS is not a party in an ADR proceeding.

**§ 291.104 Who may file a complaint?**

You may file a complaint if you are a shipper and you believe that you have been denied open and nondiscriminatory access to an OCSLA pipeline that is not a FERC pipeline.

**§ 291.105 What must a complaint contain?**

For purposes of this subpart, a complaint means a comprehensive written brief stating the legal and factual basis for the allegation that a shipper was denied open and nondiscriminatory access, together with supporting material. A complaint must:

(a) Clearly identify the action or inaction which is alleged to violate 43 U.S.C. 1334(e) or (f)(1)(A);

(b) Explain how the action or inaction violates 43 U.S.C. 1334(e) or (f)(1)(A);

(c) Explain how the action or inaction affects your interests, including practical, operational, or other non-financial impacts;

(d) Estimate any financial impact or burden;

(e) State the specific relief or remedy requested; and

(f) Include all documents that support the facts in your complaint including, but not limited to, contracts and any affidavits that may be necessary to support particular factual allegations.

**§ 291.106 How do I file a complaint?**

To file a complaint under this part, you must:

(a) File your complaint with the Director, Minerals Management Service (MMS Director) at the following address: Director, Minerals Management Service, *Attention:* Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001; and

(b) Include a nonrefundable processing fee of $7,500 under § 291.108(a) or a request for reduction or waiver of the fee under § 291.109(a); and

(c) Serve your complaint on all persons named in the complaint. If you make a claim under section 291.111 for confidentiality, serve the redacted copy and proposed form of a protective agreement on all persons named in the complaint.

**§ 291.107 How do I answer a complaint?**

(a) If you have been served a complaint under § 291.106, you must file an answer within 60 days of receiving the complaint. If you miss this deadline, MMS may not consider your answer. We consider your answer to be

filed when the MMS Director receives it at the following address: Director, Minerals Management Service, *Attention:* Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001.

(b) For purposes of this paragraph, an answer means a comprehensive written brief stating the legal and factual basis refuting the allegations in the complaint, together with supporting material. You must:

(1) Attach to your answer a copy of the complaint or reference the assigned MMS docket number (you may obtain the docket number by calling the Policy and Management Improvement Office at (202) 208–2622);

(2) Explain in your answer why the action or inaction alleged in the complaint does not violate 43 U.S.C. 1334(e) or (f)(1)(A);

(3) Include with your answer all documents in your possession or that you can otherwise obtain that support the facts in your answer including, but not limited to, contracts and any affidavits that may be necessary to support particular factual allegations; and

(4) Provide a copy of your answer to all parties named in the complaint including the complainant. If you make a claim under § 291.111 for confidentiality, serve the redacted copy and proposed form of a protective agreement to all parties named in the complaint, including the complainant.

**§ 291.108 How do I pay the processing fee?**

(a) You must pay the processing fee to the MMS Policy and Management Improvement Office by one of the following methods:

(1) By Electronic Funds Transfer using the Federal Reserve Communications System (FRCS) link to the Financial Service Fedwire Deposit System; or

(2) By check or an alternative method, only if you request and MMS authorizes use of this option before the date the processing fee is due.

(b) You must include with the payment:

(1) Your taxpayer identification number;

(2) Your payor identification number, if applicable; and

(3) The complaint caption, or any other applicable identification of the complaint you are filing.

**§ 291.109 May I ask for a fee waiver or a reduced processing fee?**

(a) MMS may grant a fee waiver or fee reduction in extraordinary circumstances. You may request a waiver or reduction of your fee by:

(1) Sending a written request to the MMS Policy and Management Improvement Office when you file your complaint; and

(2) Demonstrating in your request that you are unable to pay the fee or that payment of the full fee would impose an undue hardship upon you.

(b) The MMS Policy and Management Improvement Ooffice will send you a written decision granting or denying your request for a fee waiver or a fee reduction.

(1) If we grant your request for a fee reduction, you must pay the reduced processing fee within 30 days of the date you receive our decision.

(2) If we deny your request:

(i) You must pay the entire processing fee within 30 days of the date you receive the decision; and

(ii) That decision is final for the Department.

**§ 291.110 Who may MMS require to produce information?**

(a) MMS may require any lessee, operator of a lease or unit, shipper, grantee, or transporter to provide information that MMS believes is necessary to make a decision on whether open access or nondiscriminatory access was denied.

(b) If you are a party and fail to provide information MMS requires under paragraph (a) of this section, MMS may:

(1) Assess civil penalties under 30 CFR part 250, subpart N;

(2) Dismiss your complaint or not consider your answer; or

(3) Make determinations adverse to you on factual issues to which the information is relevant.

(c) If you are not a party to a complaint and fail to provide information MMS requires under paragraph (a) of this section, MMS may assess civil penalties under 30 CFR part 250, subpart N.

**§ 291.111 How do I request that MMS treat the information I provide as confidential?**

(a) Any person who provides documents under this subpart may claim that some or all of the information contained in a particular document is:

(1) Exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552;

(2) Information referred to in the Trade Secrets Act, 18 U.S.C. 1905; or

(3) Otherwise exempt by law from public disclosure.

(b) If you claim confidential treatment under paragraph (a) of this section, then when you provide the document to MMS you must:

(1) Provide a complete unredacted copy of the document and indicate on that copy that you are making a request for confidential treatment for some or all of the information in the document.

(2) Provide a statement specifying the specific statutory justification for nondisclosure of the information for which you claim confidential treatment. General claims of confidentiality are not sufficient. You must furnish sufficient information for MMS to make an informed decision on the request for confidential treatment;

(3) Provide a second copy of the document from which you have redacted the information for which you wish to claim confidential treatment. If you do not submit a second copy of the document with the confidential information redacted, MMS may assume that there is no objection to public disclosure of the document in its entirety.

(c) MMS retains the right to make the determination with regard to any claim of confidentiality. MMS will notify you of its decision to deny a claim, in whole or in part, and, to the extent permitted by law, will give you an opportunity to respond at least 5 days before its public disclosure.

**§ 291.112 How will MMS decide whether a grantee or transporter has provided open and nondiscriminatory access?**

MMS will not process a complaint unless the processing fee is paid or MMS grants a waiver. The MMS Director will review the complaint, answer, and other information, and will serve all parties with a written decision that:

(a) Makes findings of fact and conclusions of law; and

(b) Renders a decision determining whether the complainant has been denied open and nondiscriminatory access.

**§ 291.113 What actions may MMS take to remedy denial of open and nondiscriminatory access?**

If the MMS Director's decision under § 291.112 determines that the grantee or transporter has not provided open access or nondiscriminatory access, then the decision will describe the actions MMS will take to remedy the denial of open access or nondiscriminatory access. Actions MMS may take include, but are not limited to:

(a) Ordering grantees and transporters to provide open and nondiscriminatory access to the complainant;

(b) Assessing civil penalties of up to $10,000 per day under 30 CFR part 250, subpart N, for failure to provide open access or nondiscriminatory access.

Penalties will begin to accrue 60 days after the grantee or transporter receives the order to provide open and nondiscriminatory access under this paragraph;

(c) Requesting the Attorney General to institute a civil action in the appropriate United States District Court under 43 U.S.C. 1350(a) for a temporary restraining order, injunction, or other appropriate remedy to enforce the open and nondiscriminatory access requirements of 43 U.S.C. 1334(e) and (f)(1)(A); or

(d) Initiating a proceeding to forfeit the right-of-way grant under 43 U.S.C. 1334(e).

**§ 291.114 How do I appeal to the IBLA?**

Any party adversely affected by a decision of the MMS Director under this part may appeal to the Interior Board of Land Appeals (IBLA) under the procedures in 43 CFR part 4, subpart E.

**§ 291.115 How do I exhaust administrative remedies?**

(a) If the MMS Director issues a decision under this part but does not expressly make the decision effective upon issuance, you must appeal the decision to the IBLA under 43 CFR part 4 to exhaust administrative remedies. A decision will not be effective during the time in which a person adversely affected by the MMS Director's decision may file a notice of appeal with the IBLA, and the timely filing of a notice of appeal will suspend the effect of the decision pending the decision on appeal.

(b) If the MMS Director expressly makes a decision effective upon issuance or if the Assistant Secretary for Land and Minerals Management issues or concurs in a decision for the Department under this part, that decision is the final decision for the Department and you have exhausted your administrative remedies.

[FR Doc. E7–6197 Filed 4–5–07; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[USCG–2007–2737]**

**RIN 1625–AA08**

## Regattas and Marine Parades; Great Lakes Annual Marine Events

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend special local regulations for annual regattas and marine parades in the Captain of the Port Lake Michigan zone. This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This proposed rule will establish restrictions upon, and control the movement of, vessels in a specified area immediately prior to, during, and immediately after regattas or marine parades.

**DATES:** Comments and related materials must reach the Coast Guard on or before June 5, 2007.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2007–2737 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2007–2737), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Coast Guard Sector Lake Michigan (SPW) 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

This proposed rule will remove the specific entries from table 1 found in 33 CFR 100.901, Great Lakes annual marine events that apply to regattas and marines parades in the Captain of the Port Lake Michigan zone and list each regatta or marine parade as a subpart. This proposed rule will also add several

regattas and marine parades not previously listed in 33 CFR Part 100 and remove several events that no longer occur annually or are not regattas or marine parades.

**Discussion of Proposed Rule**

This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This proposed rule will establish restrictions upon and control the movement of vessels through a specified area immediately prior to, during, and immediately after regattas or marine parades.

The Captain of the Port will cause notice of enforcement of the special local regulations established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the special local regulations is terminated.

**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.

The Coast Guard's use of these special local regulations will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. These special local regulations will only be enforced immediately before and during the time the marine events are occurring. Furthermore, these special local regulations have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the special local regulations. The Coast Guard expects insignificant adverse impact to mariners from the activation of these special local regulations.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas designated as special local regulations in paragraphs (3) through (8) during the dates and times the special local regulations are being enforced. These special local regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. The special local regulations in this proposed rule would be in effect for short periods of time and only once per year. The special local regulations have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule will not effect the 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 proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these special local regulations and fishing rights protection need not be incompatible. We have also determined that this Proposed Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

**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, which guides 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 this proposed rule should be categorically excluded, under figure 2–1, paragraph 34 (h) of the Instruction from further environmental documentation. This proposed rule establishes a special local regulation issued in conjunction with a regatta or marine parade regulated and as such is covered by this paragraph.

A preliminary ''Environmental Analysis Check List'' and a preliminary ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the proposed rule should be categorically excluded from further environmental review.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

**§ 100.901 [Amended]**

2. Amend § 100.901 Table 1 as follows:

a. Under entry for ''Group Sault Ste. Marie, MI'' remove the entries: National Cherry Festival Blue Angels Air Demonstration and Venetian Festival Yacht Parade;

b. remove the entry for ''Group Grand Haven, MI''; and

c. remove the entry ''Group Milwaukee, WI''.

3. Add § 100.903 to read as follows:

**§ 100.903 Harborfest Dragon Boat Race; South Haven, MI.**

(a) Regulated Area. A regulated area is established to include all waters and adjacent shoreline of the Black River from approximately 250 yards upriver to 200 yards downriver of the entrance to the South Haven Municipal Marina within the following coordinates starting at 42°24′13.6″ N, 086°16′41″ W; then southeast 42°24′12.6″ N, 086°16′40″ W; then northeast to 42°24′19.2″ N, 086°16′26.5″ W; then northwest to 42°24′20.22″ N, 086°16′27.4″ W; then back to point of origin (NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the third Saturday of June, from 7 a.m. until 7 p.m.

4. Add § 100.904 to read as follows:

**§ 100.904 Celebrate Americafest, Green Bay, WI.**

(a) Regulated Area. A regulated area is established to include all waters and adjacent shoreline of the Fox River located between the Main Street Bridge located 1.58 miles above the mouth of the Fox River and the Walnut Street Bridge located 1.81 miles above the mouth of the Fox River.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on first weekend of July; 2 p.m. to 5 p.m.

5. Add § 100.905 to read as follows:

**§ 100.905 Door County Triathlon; Door County, WI.**

(a) Regulated Area. A regulated area is established to include all waters of Green Bay within the arc of a circle with a 2,000-yard radius from the northwestern point of Horseshoe Point near Frank E. Murphy County Park with its center in position 45°00′46″ N, 087°20′30″ W (NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective July 22, 2007, July 26 and 27, 2008, July 25 and 26, 2009, July 24 and 25, 2010, July 23 and 24, 2011; from 7 a.m. to 10 a.m.

6. Add § 100.906 to read as follows:

**§ 100.906 Grand Haven Coast Guard Festival Waterski Show, Grand Haven, MI.**

(a) Regulated Area. All waters and adjacent shoreline of the Grand River at Waterfront Stadium from approximately 350 yards upriver to 150 yards downriver of Grand River Lighted Buoy 3A (Lightlist number 19000) within the following coordinates: 43°04′ N, 086°14′12″ W; then east to 43°03′56″ N, 086°14′4″ W; then south to 43°03′45″ N, 086°14′10″ W; then west to 43°03′48″ N, 086°14′17″ W; then back to the point of origin (NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually August 1st; 7 p.m. to 9 p.m.

7. Add § 100.907 to read as follows:

**§ 100.907 Milwaukee River Challenge; Milwaukee, WI.**

(a) Regulated Area. All waters of the Milwaukee River from the junction with the Menomonee River at 1.01 miles above the Milwaukee Pierhead Light to the Humboldt Avenue Bridge at 3.22 miles above the Milwaukee Pierhead Light.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the third or fourth Saturday of September; from 9 a.m. to 5 p.m.

8. Add § 100.908 to read as follows:

**§ 100.908 Charlevoix Venetian Night Boat Parade; Charlevoix, MI.**

(a) Regulated Area. All waters of Round Lake, Charlevoix, MI.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the fourth Saturday of July; from 9 p.m. to 11 p.m.

9. Add § 100.909 to read as follows:

**§ 100.909 Chinatown Chamber of Commerce Dragon Boat Race; Chicago, IL.**

(a) Regulated Area. All waters of the South Branch of the Chicago River from the 18th Street Bridge 3.6 miles above the west end of the Chicago Lock to the Amtrak Bridge 3.77 miles above the west end of the Chicago Lock.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the third Friday of July; from 11:30 a.m. to 5 p.m. and on the third Saturday of July; from 9 a.m. to 5 p.m.

Dated: March 26, 2007.

**John E. Crowley, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. E7–6425 Filed 4–5–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD05–07–021]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Albemarle and Chesapeake Canal, Chesapeake, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the Centerville Turnpike (SR 170) Bridge, at AIWW mile 15.2, across the Albemarle and Chesapeake Canal in Chesapeake, Virginia. The proposal would allow the bridge to open on signal every hour on the half hour from 6:30 a.m. to 6:30 p.m., year round. The reason for this change would be to improve the schedule for both roadway and waterway users.

**DATES:** Comments and related material must reach the Coast Guard on or before May 21, 2007.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District 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 Commander (dpb), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

**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 CGD05–07–021, 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 a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals 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 Commander (dpb), Fifth Coast Guard District 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

The Centerville Turnpike (SR 170) Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of four feet, above mean high water.

The City of Chesapeake owns and operates this swing-type bridge. Current regulation requires the bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. In addition, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need only be opened on the hour and half hour. From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of recreational vessels and commercial vessels carrying non-hazardous material that do not provide a 2-hour advance notice.

The City of Chesapeake has requested a change to the existing regulations for the Centerville Turnpike (SR 170) Bridge in an effort to improve the schedule for both roadway and waterway users and to improve the travel for mariners to arrive at the Great Bridge (S168) Bridge across the Albemarle and Chesapeake, at AIWW mile 12.0 at Chesapeake, (approximately three miles away) in time to pass through the drawbridge during its opening schedule. The Great Bridge (S168) Bridge provides vessel openings on the hour between 6 a.m. to 7 p.m., seven days a week, year round.

This proposal would continue to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials, eliminates the 2-hour advance notice requirement for commercial vessels carrying non-hazardous material and the rush hour restrictions to mariners from 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m.,

Monday through Friday, except Federal holidays.

The Coast Guard reviewed the bridge logs provided by the City of Chesapeake which illustrated a small decrease in the numbers of vessels passing through the bridge during the spring, summer, and fall, primarily for ''snowbirds''. Owners of these transitory recreational vessels are either traveling north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in frequent bridge openings due to their numbers. During the spring and fall months, the flow of recreational vessels is constant.

There were approximately 9,068 and 10,415 vessel passages occurring in 2006 and 2005, respectively, over a seven-month period (April, May, June, July, August, October and November) according to records furnished by the City of Chesapeake. (See Table A)

TABLE A

| JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEPT | OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| BRIDGE OPENINGS FOR 2006 | | | | | | | | | | | |
| 210 | 151 | 280 | 510 | 428 | 627 | 659 | 514 | 418 | 521 | 451 | 255 |
| BOAT PASSAGES FOR 2006 | | | | | | | | | | | |
| 249 | 177 | 358 | 954 | 1213 | 1630 | 1500 | 954 | 743 | 1601 | 1216 | 361 |
| BRIDGE OPENINGS FOR 2005 | | | | | | | | | | | |
| 189 | 192 | 282 | 455 | 719 | 631 | 666 | 579 | 452 | 399 | 495 | 305 |
| BOAT PASSAGES FOR 2005 | | | | | | | | | | | |
| 224 | 216 | 351 | 897 | 2234 | 1724 | 1495 | 1091 | 818 | 1646 | 1328 | 458 |

Due to the large number of vessels under the current schedule, mariners cannot arrive on time for the Great Bridge (S168) Bridge opening before the morning and evening rush hour periods. The waterway at this location is narrow and offers no anchorage area, and this condition creates a hazardous situation for vessels waiting and maneuvering for long periods to transit through the draw span. Also, a well-known marina along the AIWW was contacted by the City of Chesapeake during this evaluation process in order to help seek comments from waterway users frequenting the AIWW. While it was an unofficial survey, the marina relayed that the overwhelming majority of its contacts believe the proposed schedule would work much better than the current operating regulations for the Centerville Turnpike (SR 170) Bridge.

Based on the above information, we have proposed to change the regulations that govern the Centerville Turnpike (SR 170) Bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials; and every hour on the half hour between 6:30 a.m. and 6:30 p.m., year-round. At all other times, the draw shall open on demand. The proposal will enable transient craft to reduce delays in navigating the AIWW, while also helping to ease vehicular traffic congestion.

**Discussion of Proposed Rule**

The Coast Guard proposes to amend 33 CFR 117.997(j), by revising the following paragraphs:

Paragraph (j)(2) would modify to read ''Year-round from 6:30 a.m. to 6:30 p.m., the draw need only be opened every hour on the half hour''. Paragraph (j)(3) would modify to read ''If any vessel is approaching the bridge and cannot reach the draw exactly on the half hour, the draw tender may delay the opening ten minutes past the half hour for the passage of the approaching vessel and any other vessels that are waiting to pass''. Paragraph (j)(4) would read ''Shall open on signal at all other times''.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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 will 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 guides 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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. However, comments on this section will be considered before the final rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.997, remove paragraph (j)(5) and revise paragraphs (j)(2), (j)(3) and (j)(4) to read as follows:

**§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.**

* * * * *

(j) * * *

(1) * * *

(2) Year-round from 6:30 a.m. to 6:30 p.m., the draw need only be opened every hour on the half hour;

(3) If any vessel is approaching the bridge and cannot reach the draw exactly on the half hour, the draw tender may delay the opening ten minutes past the half hour for the passage of the approaching vessel and any other vessels that are waiting to pass;

(4) Shall open on signal at all other times.

Dated: March 21, 2007.

**L.L. Hereth,**

*Rear Admiral, United States Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. E7–6146 Filed 4–5–07; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[EPA–R01–OAR–2007–0136; A–1–FRL–8295–5]**

### Approval and Promulgation of State Plans for Designated Pollutants and Facilities; Rhode Island; Negative Declaration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the Sections 111(d) and 129 negative declaration submitted by the State of Rhode Island. This negative declaration adequately certifies that there are no existing ''other solid waste incineration'' (OSWI) units located within the boundaries of the State of Rhode Island.

**DATES:** Written comments must be received on or before May 7, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2007–0136 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: cohen.ian@epa.gov.*
3. *Fax:* (617) 918–0655.
4. *Mail:* ''EPA–R01–OAR–2007–0136'', Dan Brown, Chief, Air Permits, Toxics, and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114–2023.
5. Hand Delivery or Courier. Deliver your comments to: Dan Brown, Chief, Air Permits, Toxics, and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 p.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Ian D. Cohen, Air Permits, Toxics, and Indoor Air Programs, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street (CAP), Boston, MA 02114–2023, telephone number (617) 918–1655, fax number (617) 918–0655, e-mail *cohen.ian@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the negative declaration for OSWI units in Rhode Island as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: March 27, 2007.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. E7–6461 Filed 4–5–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2006–0175; FRL–8119–8]**

### Pesticides; Food Packaging Treated with a Pesticide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would except from the definitions of ''pesticide chemical'' and ''pesticide chemical residue'' under FFDCA section 201(q), food packaging (e.g. paper and paperboard, coatings, adhesives, and polymers) that is treated with a pesticide as defined in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 2(u). As a result, such ingredients in food packaging treated with a pesticide would be exempt from regulation under FFDCA section 408 as pesticide chemical residues. Further, a food that bears or contains such ingredients would not be not subject to enforcement by the Food and Drug Administration (FDA) under section 402(a)(2) (B) of the FFDCA since the ingredients would no longer be pesticide chemical residues. Instead, such ingredients would be subject to regulation by the FDA as food additives under FFDCA section 409. FDA generally regulates such food additives in food packaging as food contact substances under FFDCA, section 409(h). This proposed rule would expand the scope of the provision in 40 CFR 180.4 which currently applies only to food packaging impregnated with an insect repellent – one type of pesticide. This proposed rule, as with the rule it would amend, only applies to the food packaging materials themselves; it would not otherwise limit EPA's FFDCA jurisdiction over pesticides or limit FDA's jurisdiction over substances subject to FDA regulation as food additives. EPA, in consultation with FDA, and FDA believe this rule would eliminate the duplicative FFDCA jurisdiction and economize federal government resources while continuing to protect human health and the environment. Even after this rule is finalized, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA would continue to regulate the food packaging as an inert ingredient of the pesticide product and regulate the pesticide active ingredient in the treated food packaging under both FIFRA and the FFDCA. The text of this proposed rule is identical to a direct final rule EPA issued on December 6, 2006. EPA received several comments opposing that direct final rule and therefore withdrew the rule on January 25, 2007, consistent with EPA policy. EPA is now issuing the rule as a proposal for public comment.

**DATES:** Comments must be received on or before April 23, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0175, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2007–0175. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

*Docket*: All documents in the docket are listed in the docket 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Mari L. Duggard, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0028; fax number: (703) 308-7026; e-mail address: *duggard.mari@epa.gov*].

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are a manufacturer or wholesaler of sanitary food packaging products or are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Pesticide manufacturing (NAICS code 32532).

• Food packaging manufacturers (NAICS code 32222).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR § 180.4. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0175. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

## II. Background

### *A. What Action is the Agency Taking?*

EPA has received applications for the registration of pesticides under FIFRA that, as proposed, will be applied to food packaging materials. These pesticides are generally intended to function as alternatives to more costly and more toxic applications of insecticides in food storage and retail establishments. The regulatory framework for this use of pesticides raises a number of complex jurisdictional issues for EPA and FDA.[1] Because the treated packaging materials will be sold to food distributors for the purpose of controlling pest infestations, as well as for packaging food, the

[1] This proposed rule would not include within its scope substances which may be regulated as pesticides under FIFRA that are used to prevent, destroy, repel or mitigate microorganisms when such substances are included for such use in or are applied for such use on food packaging (without regard to whether the substances are intended to have an ongoing effect on any portion of the packaging) (see FFDCA section 201(q)(1)(B)(ii) which excludes such substances from the definition of ''pesticide chemical''). Because such substances are already excluded from the definition of pesticide chemical residue, it is unnecessary to address these substances in this proposed rule.

pesticide-treated food packaging materials will be subject to the pesticide product registration requirements of section 3 of FIFRA. Under FIFRA, the components of pesticides are either active ingredients or inert ingredients. Active ingredients are those which, among other things, will ''prevent, destroy, repel or mitigate any pest.'' (FIFRA section 2(a)) Inert ingredients are ingredients ''which [are] not active.'' (FIFRA section 2(m)). Thus, the components of food packaging (paperboards, coatings, etc.) become inert ingredients of a pesticide product under FIFRA whenever the food packaging is treated with a pesticide active ingredient and is distributed or sold with the purpose of controlling pests.[2] Such inert ingredients are not used for a pesticidal purpose in the production, storage, processing, or transportation of food. However, as inert ingredients, these components of food packaging are also subject to regulation as ''pesticide chemical residues'' under FFDCA section 408.

Under section 408 of the FFDCA, any pesticide chemical residue in or on food is deemed unsafe, unless EPA has established a tolerance or tolerance exemption that covers the pesticide chemical residue. This is true even though FDA may have previously issued regulations under section 409 of FFDCA permitting the use of these materials in food packaging that has not been treated with a pesticide. As a result, the same food packaging materials would be subject to regulation under FFDCA by both Agencies. EPA is proposing today to give FDA sole jurisdiction under section 409 FFDCA over the packaging components of food packaging materials that have been treated with a pesticide by excepting these materials from the definition of ''pesticide chemical'' and ''pesticide chemical residue.'' Given FDA's expertise and experience in regulating the components of food packaging, EPA and FDA believe this rule will eliminate the duplicative FFDCA jurisdiction and economize Federal government resources while continuing to protect human health and the environment without additional regulatory oversight by EPA.

In 1998, EPA consciously limited the exception at 40 CFR 180.4 to food packaging materials impregnated with an insect repellent, since at the time of promulgation EPA had only received an application for a pesticide product containing an insect repellent. EPA has now received applications for other treated food packaging products that contain active ingredients that are not insect repellents and will not be applied through impregnation of the materials. EPA and FDA believe it is appropriate to extend the 1998 rule to give FDA sole jurisdiction under the FFDCA over the inert ingredients in such food packaging products without regard to the application technique and mode of action of the active ingredients in such products. Again, this proposed rule would not affect EPA's jurisdiction under section 408 over ingredients other than the packaging materials in such products (including the pesticide active ingredient), nor does it affect EPA's jurisdiction under FIFRA to regulate such products.

On December 6, 2006, EPA published a direct final rule (71 FR 70667) to expand the coverage of 40 CFR 180.4 as discussed in the preceding paragraph. Because EPA received several comments opposing promulgation of that rule, EPA withdrew the rule on January 25, 2007 and is today issuing this proposal for public comment prior to developing any final rule. The regulatory text of the withdrawn direct final rule and today's proposal are identical: both provide that the components of food packaging material (e.g. paper and paperboard, coatings, adhesives, and polymers) that have been treated with a pesticide are excepted from the definition of pesticide chemical and pesticide chemical residue under section 201(q) of the FFDCA. Again, as explained in detail above, this proposal, like the direct final rule it replaces, only excepts packaging material from EPA regulation under the FFDCA – these materials will continue to be regulated by the FDA under section 409. Further, the rule does not modify the existing regulatory regime under the FFDCA for pesticidally active ingredients in food packaging nor does it affect EPA regulation of pesticide products under FIFRA. However, the comments EPA received on the direct final rule all appeared to oppose the rule principally because the commenters were concerned about the inclusion of pesticides in food packaging and did not believe EPA should either be permitting or relinquishing any authority to regulate that activity. It appears, therefore, that the commenters either misunderstood the nature of the amendment to § 180.4 or chose to submit comments to EPA on matters not specifically addressed by the direct final rule – or by today's proposed rule. In any case, nothing in the withdrawn direct final rule or in today's proposal relieves EPA of the obligation to regulate pesticides in food packaging, nor does today's action serve to approve the use of any pesticides in food packaging. Accordingly, these comments are not relevant to the action EPA is today proposing to take.

EPA previously provided for a 30–day comment on the withdrawn direct final rule. As noted, the text of this proposed rule is identical to the withdrawn direct final rule. Because interested persons have already had an opportunity to comment on this matter through the direct final rule, EPA is providing only for an additional 15–day comment period on this proposed rule.

*B. What is the Agency's Authority for Taking this Action?*

Section 201(q)(3) of FFDCA, as amended by the Food Quality Protection Act (FQPA), allows the Administrator, under specified conditions, to except certain substances from the definition of ''pesticide chemical'' or ''pesticide chemical residue'' if—

(A) its occurrence as a residue on or in a raw agricultural commodity or processed food is attributable primarily to natural causes or human activities not involving the use of any substance for a pesticidal purpose in the production, storage, processing, or transportation of any raw agricultural commodity or processed food; and

(B) the Administrator, after consultation with the Secretary, determines that the substance more appropriately should be regulated under one or more provisions of this Act other than sections 402(a)(2)(B) and 408.

With today's proposal, EPA would except from the definition of ''pesticide chemical'' substances that are inert ingredients in food packaging treated with a pesticide, when such ingredients are the components of the food packaging (e.g. paper and paperboard, coatings, adhesives and polymers).

As previously explained, this proposed rule would not affect EPA's regulation of such substances as inert ingredients under FIFRA. EPA would continue to exercise jurisdiction under FIFRA over these substances when they are used as inert ingredients in food packaging that is intended to produce a pesticidal effect. The materials that

[2] It is important to understand that this proposed rule would only apply to a very small subset of food packaging materials: pesticide-treated food packaging that is distributed or sold with the purpose of controlling pests. Food packaging that is not distributed or sold to control pests is not a pesticide and is not subject to this rule. For example, packaged products that are simply treated with pesticides by food distributors, retailers or homeowners solely to control pests on site do not themselves become pesticides simply as a result of such applications. Rather, the product itself must be distributed with the purpose of providing pest control to become a pesticide. The treated packaging materials addressed in this proposed rule are those that are sold for the express purpose of providing ongoing protection from pests that may contaminate the products made with the treated packaging.

make up food packaging treated with a pesticide may serve one of two purposes: (1) To control pests, or (2) to be one of the materials that make up the container for food. As a result of this proposed rule, EPA would continue to regulate the materials that control pests and FDA will regulate the substances that make up the food packaging material. Consistent with EPA's pesticide registration regulations, EPA will not issue a registration under FIFRA for pesticide products containing food packaging inert ingredients if the presence of these ingredients in or on food is not authorized or permitted by FFDCA and the implementing regulations.

EPA, in consultation with FDA, believes that section 201(q)(3) is applicable to inert ingredients in pesticide treated food packaging materials that are the components of the food packaging (paperboard, coatings, etc). When such inert ingredients are the components of the food packaging itself, EPA believes the occurrence of these substances as residues in or on food would be appropriately excepted from the definition of ''pesticide chemical'' or ''pesticide chemical residue'' because such substances are not attributable primarily to the use of the substances for a pesticidal purpose in the production, storage, processing or transportation of food. Rather, the presence of such substances as residues in food is primarily attributable to their use for purposes of packaging food. For this reason, and because of FDA's considerable experience in regulating such substances found in food packaging, EPA and FDA believe it is appropriate for FDA to regulate these inert ingredients under section 409 of FFDCA.

As noted, this proposed regulation would except from the definition of ''pesticide chemical'' and ''pesticide chemical residue'' any inert ingredient that is a component of food packaging material treated with a pesticide. EPA, in consultation with FDA, believes the identity of the pesticide in or on the packaging material is not relevant to a determination under section 201(q)(3) regarding whether it is appropriate to except an inert ingredient from the definition of ''pesticide chemical'' or ''pesticide chemical residue.'' As noted above, that determination turns only on whether: (1) the occurrence of the residues of the substance in or on food is attributable primarily to the use of substances for a pesticidal purpose in the production, storage, processing or transportation of food; and (2) whether it is more appropriate to regulate such substances under another provision of FFDCA other than sections 402(a)(2)(B) and 408. Thus, EPA has determined that inert ingredients that are the components of the food packaging material in pesticide treated food packaging are more appropriately regulated by FDA under FFDCA. This proposed rule would therefore amend 40 CFR 180.4 to extend the exception contained therein to any food packaging materials treated with a pesticide.

## III. Statutory and Executive Order Reviews

As an exception, this action does not impose any regulatory obligations. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is not ''significant'' and is not subject to OMB review. This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et. Seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This proposed rule has no federalism or tribal implications, because it will not have substantial direct effects on States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, as specified in Executive Orders 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and 13175 entitled *Consultation and Coordination with Indian Tribal Governments*, (65 FR 67249, November 6, 2000). Nor does this rule raise issues that require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This proposed rule is also not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. In addition, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (Public Law 104–113)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities, because this regulatory action is an exemption and imposes no regulatory obligations. EPA will provide this information to the Small Business Administration's office of Advocacy upon request.

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 2007.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), and 371.

2. Section 180.4 is amended by revising paragraph (a) to read as follows.

**§ 180.4 Exceptions.**

* * * * *

(a) Inert ingredients in food packaging treated with a pesticide, when such inert ingredients are the components of the food packaging material (e.g. paper and paperboard, coatings, adhesives, and polymers).

* * * * *

[FR Doc. E7–6349 Filed 4–5–07; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[Docket No. 070326070–7070–01; I.D. 032107A]**

**RIN 0648–AV47**

## Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations that would restrict the harvest of halibut by persons fishing on a guided sport charter vessel in International Pacific Halibut Commission (IPHC) Regulatory Area 2C. The current sport fishing catch or bag limit of two halibut per day is proposed to be changed for a person sport fishing on a charter vessel in Area 2C to require that at least one of the two fish taken in a day be no more than 32 inches (81.3 cm) in length. This proposed regulatory change is necessary to reduce the halibut harvest in the charter vessel sector while minimizing negative impacts on this sector, its sport fishing clients, and the coastal communities that serve as home ports for the fishery. The intended effect of this action is a reduction in the poundage of halibut harvested by the guided sport charter vessel sector in Area 2C.

**DATES:** Written comments must be received by April 23, 2007.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by any of the following methods:

- *Mail:* P.O. Box 21668, Juneau, AK 99802 1668;
- *Hand deliver to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK;
- *Fax:* 907–586 7557;
- *E-mail: 0648–AV47–PR-HAL@noaa.gov*. Include in the subject line of the e-mail the following document identifier: Charter Vessel Halibut 0648–AV47. E-mail comments with or without attachments are limited to 5 megabytes; or
- *Webform at the Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter or Jason Gasper, (907) 586–7228 or email at *jay.ginter@noaa.gov* or *jason.gasper@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention signed at Washington, D.C., on March 29, 1979. The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Approved regulations developed by the IPHC are published as annual management measures pursuant to 50 CFR 300.62.

Current regulations applicable to sport fishing for halibut in all IPHC areas in Alaska are contained in section 25 of the 2007 annual management measures ( 72 FR 11792 ; March 14, 2007). These regulations include the following restrictions per person sport fishing:

1. A single line with no more than two hooks attached or a spear;
2. A daily bag limit of two halibut of any size;
3. A possession limit of two daily bag limits; and
4. A sport fishing season of February 1 through December 31.

The IPHC first adopted sport halibut fishing rules in 1973, in response to Federal, state, and provincial agencies seeking consistency and uniformity in sport fishing regulations in all IPHC areas. The IPHC bag limit rule was first established as three fish per day per person in 1973, was reduced to one fish per day in 1974, and raised to two fish per day in 1975, where it has remained until present. Similarly, the IPHC established the sport fishing season for halibut originally from March 1 through October 31 in 1973, and changed it for several years until the current 11-month season was set in 1986. Finally, during the years 1984 through 1997, the IPHC required sport charter vessels to have IPHC licenses.

Additional regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council) and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen in and off of Alaska. The Council has exercised this authority, most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut and is continuing this work. This program could include measures to restrict harvest in 2008 and a moratorium on new entry into the charter vessel fishery in 2009.

**Management of the Halibut Fisheries**

The harvest of halibut occurs in three basic fisheries the commercial, sport, and subsistence fisheries. An additional amount of fishing mortality occurs as bycatch or incidental catch while targeting other species and wastage.

The IPHC annually determines the amount of halibut that may be removed from the resource without causing biological conservation problems on an area-by-area basis in all areas of Convention waters. It imposes catch limits, however, on only the commercial sector in areas in and off of Alaska. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, recreational, subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The target amount of allowable harvest for a given area is calculated by multiplying a fixed harvest rate by the estimate of exploitable biomass. This target level is called the total constant exploitation yield (CEY) as it represents the target level for total removals (in net pounds) for that area in the coming year. The IPHC subtracts estimates of all non-commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after the removals are subtracted, is the maximum catch or ''fishery CEY'' for an area's directed commercial fixed gear fishery.

This method of determining the commercial fishery's catch limit in an area results in a decrease in the commercial fishery's use of the resource as other non-commercial uses increase their proportion of the total CEY. As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY. This method for determining the limit for the commercial use of halibut has worked well for many years to conserve the halibut resource, provided that the other non-commercial uses of the resource have remained relatively stable and small. Although most of the non-commercial uses of halibut have been relatively stable, growth in the charter vessel fishery in recent years, particularly in Area 2C, has resulted in a de facto allocation of the halibut

resource away from the commercial fishery to the charter vessel fishery.

**Guideline Harvest Level (GHL)**

Currently, the Council's only approved management policy in effect for the charter vessel fisheries is to have separate GHLs for Area 2C and Area 3A. These GHLs are codified at 50 CFR 300.65(c). The GHLs serve as benchmarks for monitoring the charter vessel fishery relative to the commercial fishery and other sources of fishing mortality. The GHLs do not limit the charter vessel fisheries. Although it is the Council's policy that the charter vessel fisheries should not exceed the GHLs, no constraints have been imposed on the charter vessel fisheries for GHLs that have been exceeded in the past.

The Council has discussed the expansion of the charter vessel fishery for halibut since 1993. The GHLs were initially adopted by the Council in 1997 without implementing regulations. The Council stated its intent to maintain a stable charter vessel fishing season without a mid-season closure. If a GHL was exceeded, other management measures would be triggered to take effect in years following attainment of the GHL. The Council envisioned ''framework'' regulations of increasing restrictiveness depending on the extent to which a GHL was exceeded. Proposed framework regulations were published in 2002 (January 28, 2002; 67 FR 3867); however, NMFS informed the Council later that year that its framework regulations could not be implemented. Hence, a final rule establishing the GHLs was eventually published without any restrictive regulations (68 FR 47256; August 8, 2003).

The GHLs represent a pre-season specification of acceptable annual halibut harvests in the charter vessel fisheries in Areas 2C and 3A. To accommodate some growth in the charter vessel sector while approximating historical harvest levels, the Council recommended GHLs based on 125 percent of the average 1995 through 1999 charter vessel harvest. For Area 2C, the GHL was set at 1,432,000 lb (649.5 mt) net weight and in Area 3A, the GHL was set at 3,650,000 lb (1,655.6 mt) net weight. When the Council recommended these GHLs, halibut stocks were considered to be near record high levels of abundance. To accommodate decreases and subsequent increases in abundance, the Council recommended a system of step-wise adjustments in each GHL based on a predetermined uniform measure of stock abundance. The measure used was the CEY determined annually by the IPHC. Specifically, the Council linked a step-wise reduction in the GHL in any one year to the decrease in the CEY as compared to the 1999 through 2000 average CEY. For example, if the halibut stock in Area 2C were to fall from 15 to 24 percent below its 1999 through 2000 average CEY, then the GHL for Area 2C would be reduced by 15 percent. Conversely, as the CEY increased from low levels, the GHL also would increase in the same step-wise manner. Regardless of how high the CEY may rise above its 1999 through 2000 average, however, the GHLs were not designed to increase above their maximum amounts. Since 2003 when the GHLs became effective, they have never been reduced below their maximum level because declines in the total CEY have not been sufficient to trigger the first step reduction of the GHLs.

**Recent Harvests of Halibut in Areas 3A and 2C**

In Area 3A, the commercial and sport harvest of halibut over the past 10 years (1997 through 2006) has been estimated by the IPHC to average about 28.999 million lb (13,153.9 mt) per year. Of this amount, the commercial fishery accounts for about 77.9 percent, the sport fishery (guided and unguided combined) accounts for about 16.8 percent, and the remaining 5.3 percent may be attributed to subsistence, bycatch, and wastage combined. Estimates of the subsistence harvest of halibut have been made based on surveys conducted by the Alaska Department of Fish and Game (ADF&G) only in the past three years and average about 379,000 lb (171.9 mt) per year.

In the most recent three years (2004 through 2006), the annual average of total halibut removals in Area 3A is 32.894 million lb (14,920.6 mt), of which the commercial fishery has taken about 76.8 percent, the sport fishery has taken about 17.6 percent, the subsistence fishery has taken about 1.2 percent, and about 4.4 percent is attributed to bycatch and wastage. The commercial fishery is the primary user of the halibut resource in Area 3A followed by the sport fishery, which together account for almost 95 percent of the total removals from the halibut resource.

The sport fishery in Area 3A, comprised of guided fishing on charter vessels and unguided angling, has harvested an annual average of 5.142 million pounds (2,332.4 mt) over the past 10 years (1997 through 2006), of which about 63 percent is taken by the charter vessel sector. In the most recent three years (2004 through 2006), however, the average annual sport fishing harvest has increased slightly to 5.789 million pounds (2,625.9 mt) and the charter vessel sector proportion of this catch has increased to 65.1 percent.

In Area 2C, the commercial, sport and subsistence harvest of halibut over the past 10 years (1997 through 2006) has been estimated by the IPHC to average about 12.454 million lb (5,649.3 mt) per year. Of this annual average total removal from the halibut resource, the commercial fishery accounts for about 76.7 percent, the sport fishery (guided and unguided combined) account for about 19.1 percent, and the remaining 4.2 percent may be attributed to subsistence, bycatch, and wastage combined. Estimates of the subsistence harvest of halibut have been made based on surveys conducted by ADF&G only in the past three years and average about 600,000 lb (272.2 mt) per year.

In the most recent three years (2004 through 2006), the annual average of total halibut removals in Area 2C is 14.142 million lb (6,414.8 mt) of which the commercial fishery has taken about 73.8 percent, the sport fishery has taken about 20.7 percent, the subsistence fishery has taken about 4.3 percent, and about 1.2 percent is attributed to bycatch and wastage. Clearly, the commercial fishery is the primary user of the halibut resource in Area 2C followed by the sport fishery, which together account for almost 95 percent of the total removals from the halibut resource.

In Area 2C, the sport fishery is comprised of guided fishing on charter vessels and unguided angling. The latter is done primarily by residents of Southeast Alaska and their visiting family and friends, while the former is done primarily by non-resident tourists. The linkage between guided sport fishing and tourism is apparent from data collected by ADF&G and compiled by IPHC staff. Over the past 10 years (1997 through 2006), the average guided harvest of halibut has been 1.431 million lb (649.1 mt) per year and the unguided sport harvest of halibut has amounted to 0.951 million lb (431.4 mt) per year. Proportionately, the guided charter vessel harvest to unguided sport harvest has been a ratio of about 60 to 40 percent. The guided sport harvest has increased in more recent years. Over the past five years (2002 through 2006), the annual guided sport charter vessel harvest amounted to an average 63.9 percent of the total sport harvest of halibut in Area 2C, and in 2005 reached a record 69.8 percent of the total sport harvest. In response, the Council is considering a management program to

restrict the charter vessel harvest of halibut.

Since their implementation in 2003, the GHLs for Areas 3A and 2C have been exceeded by the estimated charter vessel halibut harvest in 2004, 2005, and 2006. In Area 3A, based on ADF&G sport fishing survey data, the charter vessel harvest in 2003 was seven percent under the GHL, but in 2004 and 2005, it was one percent over the GHL for Area 3A each year. In 2006, the GHL for Area 3A was projected to be exceeded by nine percent, or 297,000 lb (134.7 mt).

In Area 2C, based on ADF&G sport fishing survey data, the charter vessel harvest in 2003 was one percent under the GHL, but in 2004 and 2005, it was 22 percent and 36 percent over the GHL, respectively. In 2006, based on sport fishing survey data the GHL for Area 2C was projected to be exceeded by 42 percent, or 596,000 lb (270.3 mt).

**Management Agency Response**

At its annual meeting in January 2007, the IPHC adopted a motion to recommend reducing the daily bag limit for anglers fishing on charter vessels in Areas 2C and 3A from two halibut to one halibut during certain time periods. Specifically, the IPHC recommended that the one-fish bag limit should apply to guided anglers in Area 2C from June 15 through July 30, and in Area 3A from June 15 through June 30.

In Area 3A, the one-fish bag limit restriction applicable for two weeks in June would reduce the charter vessel harvest of halibut by an estimated 326,000 lb (147.9 mt). In Area 2C, the one-fish bag limit restriction applicable for six weeks would reduce the charter vessel harvest of halibut by an amount estimated to range from 397,000 lb (180.1 mt) to 432,000 lb (195.9 mt).

The IPHC intended the reduced bag limits to apply until superseded by measures developed by the Council and implemented by the Secretary that would more effectively manage the charter vessel harvest of halibut. The IPHC recommended these harvest restrictions because it believed its management goals were at risk by the magnitude of the halibut harvest by the charter vessel sector in excess of the GHLs in Areas 3A and 2C. In taking this action, the IPHC Commissioners highlighted its preference for the Council to resolve the allocation issue between commercial and sport sectors. One reason given for delaying the effective date of the reduced bag limit until June 15 was to afford the Secretary time to resolve the issue under U.S. domestic law with regulations that would achieve ''comparable reductions'' in halibut harvest by the charter vessel fishery.

In a letter to the IPHC on March 1, 2007, the Secretary of State, with concurrence from the Secretary, rejected the recommended one-fish bag limit in Areas 2C and 3A, and indicated that appropriate reduction in the charter vessel harvest in these areas would be achieved by a combination of ADF&G and NMFS regulatory actions.

For Area 3A, the State of Alaska (State) Commissioner of Fish and Game issued an emergency order on January 26, 2007 (No. 2–R–3–02–07), prohibiting a sport fishing guide and a sport fishing crewmember working on a charter vessel in salt waters of Southcentral Alaska from retaining fish while clients are onboard the vessel. Also, the emergency order limits the maximum number of lines that may be fished from a charter vessel to the number of paying clients onboard the vessel. This emergency order will be effective from May 1, 2007, through December 31, 2007. The State estimates that this action will reduce the harvest of halibut on charter vessels in Area 3A by 7.7 percent to 10.6 percent of the 2006 harvest or 306,000 lb (138.8 mt) to 421,000 lb (191.0 mt). Assuming the charter halibut fishery in Area 3A in 2007 is similar to the fishery in 2006, this reduction in the charter halibut harvest is expected to produce a charter halibut harvest of about 3.662 million lb (1,661.1 mt) to 3.547 million pounds (1,609.3 mt), a volume range that brackets the GHL for Area 3A. Hence, NMFS and ADF&G will rely on the effectiveness of the State's emergency order by itself to make comparable reductions in the charter vessel halibut harvests in Area 3A, which allows this proposed rule to focus only on managing the charter vessel fishery for halibut in Area 2C. No further regulatory action by NMFS is necessary to manage the 2007 charter vessel halibut fishery in Area 3A.

In Area 2C, an emergency order to prohibit retention of fish by charter vessel guides and crewmembers in Area 2C also was issued by the State in 2006 and again in 2007 (No. 1–R–02–07). This action alone, however, would not likely reduce the 2007 charter vessel harvest of halibut to levels comparable to the IPHC-recommended bag limit reduction, an amount estimated to range from 397,000 lb (180.1 mt) to 432,000 lb (195.9 mt). Regulatory action to remedy this problem by June 2007 would require the Secretary to developed regulations independent of the Council process.

Therefore, NMFS developed alternatives for analysis in an EA/RIR/IRFA (see **ADDRESSES**). The goal of the restrictive measures analyzed in the EA/RIR/IRFA is to reduce sport fishing mortality of halibut in the charter vessel sector in Area 2C to a level comparable to the level that would be achieved by the IPHC-recommended regulations and in a manner that would reduce adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. The one-fish bag limit recommended by the IPHC would have had negative economic impacts on the charter vessel industry in Area 2C. Comments from charter vessel guides before, during, and after the IPHC meeting in January 2007, have indicated that changing the bag limit for anglers on charter vessels from two fish to one fish per day for a six-week period from June 15 to July 31 would have an adverse impact on charter vessel bookings that had already, or were in the process of being, made for the 2007 season. This change was perceived by the affected public as adversely affecting demand for guided charter services during that period. Charter vessel operators and representatives stated that the ability to offer an opportunity to harvest more than one fish was important for their charter business. Hence, NMFS was guided in formulating regulatory alternatives for analysis by a need to reduce the charter vessel fishery's amount of halibut harvest in Area 2C to a level comparable to the level that would have been achieved by the IPHC-recommended one-fish bag limit while preserving a two-fish bag limit that would minimize adverse impacts on the guided sport industry.

**The Proposed Action**

For the reasons described above, NMFS proposes a change to regulations at 50 CFR 300.65 that would allow a daily bag limit of two halibut per sport fishing client on a charter vessel operating in Area 2C provided that at least one of the two halibut retained is no longer than 32 in (81.3 cm) with its head on. If only one halibut is retained by the sport fishing client, it could be of any length. The ADF&G has estimated that a maximum size restriction for one of two potential fish taken by charter vessel clients would reduce the overall harvest in Area 2C by the charter vessel sector by about 425,000 lb (192.8 mt), which is about 98 percent of the maximum amount of the poundage range estimated that could be reduced as a result of the IPHC-recommended one-fish bag limit during the six-week period, June 15 - July 31.

NMFS considered other alternative restrictions to the proposed action in addition to the status quo alternative. These included (1) a two-halibut bag limit that required at least one of the retained fish to have a minimum size of four optional lengths 45 in (114 cm), 50 in (127 cm), 55 in (140 cm), or 60 in (152 cm), and (2) a two-halibut bag limit that required both retained fish to be at least 32 in (81.3 cm) long. An alternative of a one-fish bag limit identical to the IPHC-recommended restriction was considered but rejected because it would fail to meet the goal of providing charter vessel anglers with an opportunity to harvest two halibut per day.

The proposed restriction was selected over the other two-fish bag limit alternatives for the following four reasons:

1. The status quo alternative of allowing a two-fish bag limit without further restriction would not reduce the charter vessel halibut harvest below what it was in 2006. This would be counter to the commitment to substitute a regulation for the IPHC-recommended bag limit reduction that would result in a comparable reduction in charter vessel harvest of halibut.

2. A two-fish bag limit that would require both retained halibut to be at least 32 in (81.3 cm) long would not result in a reduction of poundage taken by the charter vessel sector, and could have the reverse effect.

3. A minimum size limit of at least 45 in (114 cm) for one of the two halibut harvested under a two-fish bag could reduce the charter vessel sector harvest in Area 2C by an estimated 434,000 lb (196.9 mt). Anecdotal information suggests, however, that a minimum size limit may disadvantage charter businesses operating in areas where small halibut are typically caught. This restriction would be a de facto one-fish bag limit for operators in areas with fewer large halibut. In addition, a minimum size limit would stimulate searching for big halibut which could result in increased catch-and-release mortality of smaller fish. The increased search for the ''trophy'' sized fish also could increase the bycatch of other species such as rockfish, which typically do not survive being caught and released, or lingcod.

4. A maximum size limit of 32 in (81.3 cm) for one of the two halibut harvested under a two-fish bag would provide an appropriate reduction in charter vessel harvest in Area 2C while also reducing the potential difficulties with a minimum size limit. Specifically, charter operators fishing in waters where small halibut are typically caught would likely be able to provide their clients with a good chance of harvesting two fish. This maximum size limit also would likely reduce the bycatch and catch-and-release mortality that would be expected from searching for a ''trophy'' fish of a larger minimum size limit.

For halibut harvested on a charter vessel in Area 2C, the proposed regulation would prohibit the possession of halibut that are disfigured in a manner that prevents the determination of their length or number harvested. This regulation is necessary to allow Federal enforcement officers to determine the number of halibut harvested and the head-on length for halibut subject to the previously described 32 inch maximum size requirement. Charter vessel operators would be allowed under the proposed regulation to fillet halibut onboard the charter vessel; however, the intact carcass (i.e., a carcass with the head attached to the tail) must be retained onboard the vessel until all fillets are offloaded. An intact carcass is required because enforcement officers cannot otherwise determine the head-on length of a halibut filleted at sea.

Finally, definitions for ''Area 2C'' and ''head-on length'' are added. These definitions are based on the most recent annual management measures authorized by 50 CFR 300.62 and published in the **Federal Register** on March 14, 2007 at 72 FR 11792. The term ''Area 2C'' is defined in the annual management measures at section 6(3). The Area 2C definition used in this action is identical to that in section 6(3) and repeated for the convenience of the reader. The term ''head-on length'' is not defined in the annual management measures, however, it is described in section 13, ''Size limits,'' in terms of the method by which the size of halibut is to be determined. It is a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail. This definition is consistent, therefore, with the measurement method used in the commercial halibut fishery.

## Classification

An Initial Regulatory Flexibility Analysis was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on directly regulated small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A description of this action, why it is being considered, and the legal basis for this action are presented above in the preamble to this rule. A summary of the analysis follows.

The action under consideration would modify the two fish daily bag limit for halibut imposed on guided charter clients in IPHC Area 2C to require that one of the two fish be no more than 32 in (81.3 cm) long. The entities directly regulated by this action would be the guided charter operations active in harvesting halibut in IPHC Area 2C (Southeast Alaska).

In 2005, 381 guided charter businesses operating 654 vessels indicated bottomfish harvesting effort in Area 2C. All of these operations are believed to be small entities, with annual gross revenues of less than the limit of $6.5 million dollars for charter vessels. The largest companies involved in the fishery, lodges or resorts that offer accommodations as well as an assortment of visitor activities, may be large entities under the Small Business Administration size standard. Key informant interviews have indicated that the absolute largest of these companies may gross more than $6.5 million per year, but that it was also possible that all of the entities involved in the charter halibut harvest grossed less than this amount. The number of small entities is likely to be overestimated because of the limited information on vessel ownership and operator revenues. However, it is likely that nearly all entities qualify as small businesses. This proposed action is expected to reduce the halibut catches per guided trip for these operations, and could reduce the demand for their services, the overall harvests in the guided sport fishery, and the growth of the fishery. This is believed to be a competitive industry. This action may reduce short-term profit levels or create short-run losses for charter vessel operators. In the long run, entry or exit by firms in this industry, in response to positive or negative profits, should tend to drive profits to zero. Very little systematic information is available on charter boat operations or on how charter boat clients and operators may respond to the size limit. The demand for charter boat trips depends on a number of factors affecting the nature of the experience, and the halibut catch per unit of effort is only one of these. It is not possible to predict quantitatively the impact on gross or net revenues, or on entry or exit from the industry.

NMFS has examined three alternatives to this action. Alternative 1, the status quo, would retain the two-fish bag limit without changes. This alternative would fail to meet a key objective of the action, which is to

reduce the guided sport harvest by an amount comparable to the reduction that would have been achieved by the IPHC bag limit recommendation. Alternative 2 would have kept the two-fish bag limit, but impose a season-long 45–inch (114 cm) or larger minimum size restriction on the second fish. The 45–inch (114 cm) limit associated with this alternative would have generated guided harvest reductions comparable to those of the IPHC recommendation and thus the expected harvest reduction would have been close to the preferred alternative. However, Alternative 2 would have required guides to measure larger, heavier fish than the preferred alternative, which would have increased the difficulty of compliance for the guides. Moreover, in areas with halibut of a smaller size, larger fish might be more difficult to find than smaller fish. If fish larger than 45 inches (114 cm) were scarce in some areas, the minimum size limit could have a similar impact to a one fish bag limit. Such an impact would be more burdensome to charter vessel operators in those areas than operators in areas where larger fish were more common. Alternative 3 would impose a minimum size limit of 32 inches (81.3 cm) on both fish for the fishing season (currently February 1 to December 31). NMFS does not prefer this alternative because of uncertainties about its effect on reducing harvest. In particular, this alternative may actually increase the pounds of fish harvested in the charter fishery because anglers would be required to harvest larger halibut than they may otherwise harvest under the current bag limit. Alternative 4 would allow anglers to harvest one halibut of any size and one halibut with a total length at least 30 inches (76.2), 32 inches (81.3 cm), or 35 inches (88.9 cm). Of these options, NMFS preferred a size limit of 32 inches (81.3 cm) because its estimated harvest reduction is the most comparable to the IPHC-recommended action. The estimated harvest reduction for the preferred alternative is approximately 425,000 lb (192.8 mt). The enforcement of a size limit requires charter vessel operators to retain the halibut carcass until the fillets are offloaded from the vessel. To an unknown extent, proper disposal of the carcasses may increase costs to charter vessel operators.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules. This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866. This proposed rule complies with the Halibut Act and the Secretary's authority to implement allocation measures for the management of the halibut fishery. No duplicative or overlapping rules exist that are associated with this proposed rule.

This proposed action is consistent with E.O. 12962 which directs Federal agencies to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities ''to the extent permitted by law and where practicable.'' This E.O. does not diminish NMFS' responsibility to address allocation issues, nor does it require NMFS or the Council to limit their ability to manage recreational fisheries. E.O. 12962 provides guidance to NMFS to improve the potential productivity of aquatic resources for recreational fisheries. This proposed rule does not diminish that productivity or countermand the intent of E.O. 12962.

### List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: April 2, 2007.

**John Oliver**

*Deputy Assistant Administrator for Operations. National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart E—Pacific Halibut Fisheries

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

2. In § 300.61, definitions for ''Area 2C'' and ''Head-on length'' are added, in alphabetical order, to read as follows:

**§ 300.61 Definitions.**

* * * * *

*Area 2C* includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′54″ N. lat., 136°38′24″ W. long.) and south and east of a line running 205° true from said light.

* * * * *

*Head-on length* means a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

* * * * *

3. In § 300.65, paragraphs (d) through (k) are redesignated as (e) through (l), respectively, and new paragraph (d) is added to read as follows:

**§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.**

* * * * *

(d) In Commission Regulatory Area 2C, halibut harvest on a charter vessel is limited to no more than two halibut per person per calendar day provided that at least one of the harvested halibut has a head-on length of no more than 32 inches (81.3 cm). If a person sport fishing on a charter vessel in Area 2C retains only one halibut in a calendar day, that halibut may be of any length.

* * * * *

4. In § 300.66, paragraph (m) is added to read as follows:

**§ 300.66 Prohibitions.**

* * * * *

(m) Possess halibut on board a charter vessel in Area 2C that has been mutilated or otherwise disfigured in a manner that prevents the determination of size or number of fish, notwithstanding the requirements of the Annual Management Measure 25(2) and (7) (as promulgated in accordance with § 300.62 and relating to Sport Fishing for Halibut). Filleted halibut may be possessed on board the charter vessel provided that the entire carcass, with the head and tail connected as single piece, is retained on board until all fillets are offloaded.

[FR Doc. E7–6422 Filed 4–5–07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 070322065–7065–01; I.D. 030607C]**

**RIN 0648–AV39**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 13

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 13 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). Amendment 13 was developed by the New England Fishery Management

Council (Council) to permanently re-activate the industry-funded observer program in the Scallop FMP through a scallop total allowable catch (TAC) and days-at-sea (DAS) set-aside program that helps vessel owners defray the cost of carrying observers. Proposed measures for the observer service provider program in Amendment 13 include: Requirements for becoming an approved observer service provider; observer certification and decertification criteria; and notification requirements for vessel owners and/or operators. This proposed rule would require scallop vessel owners, operators, or vessel managers to procure certified fishery observers for specified scallop fishing trips from an approved observer service provider. Additionally, this proposed rule would allow adjustments to the observer program to be done through framework action. The measures in this proposed rule would enable NMFS to utilize the Scallop FMP's set-aside program that has been in place in the Scallop FMP since 1999. The set-aside program requires scallop vessel owners to pay for observers, whether or not scallop TAC or DAS set-aside is available, and compensates vessel owners with additional scallop catch or reduced DAS accrual rate if scallop TAC or DAS set-aside is available. Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish and interactions with threatened and endangered species.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on May 7, 2007.

**ADDRESSES:** Copies of Amendment 13, the public hearing document, and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*. Amendment 13 is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Scallop Amendment 13 Proposed Rule.''
- E-mail to the following address: *ScallopAmendment13@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Scallop Amendment 13 Proposed Rule'';
- Fax: 978–281–9135
- Electronically through the Federal e-Rulemaking portal: *http//www.regulations.gov*.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, phone 978–281–9272, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

Since 1999, NMFS has required scallop vessels operating in Scallop Access Areas to pay for observer coverage. This provision operated effectively through a contractual arrangement with an observer provider until June 2004, when the Department of Commerce informed NMFS that it could not renew the contract without resolving possible conflicts with the Miscellaneous Receipts Act and policies regarding augmentation of appropriations. The contract arrangement had enabled vessel owners to pay the observer provider directly for observer deployments, with details of the observer deployment requirements specified through the contract. The expiration of the contract arrangement eliminated the mechanism allowing vessel owners to pay for observer coverage.

Even though the mechanism allowing vessel owners to pay for observer coverage was inoperable, the Council continued to establish specifications for the scallop fishery that included set-asides (TAC and DAS, depending on fishing area) that could be harvested on observed trips to offset the cost to the industry of observers. Existing scallop regulations specify set-asides through February 29, 2008, and require that industry must pay for observer coverage, even if set-asides have been exhausted. For vessels fishing in the Scallop Access Areas, the Council has allocated a portion of the total projected scallop catch to defray the observer costs for vessel owners. Scallop vessels selected to carry observers on access area trips are authorized to land additional scallops on these observed trips to help offset the cost of the observer. An additional set-aside of a reduced DAS accrual rate is allocated to pay for the cost of observers on observed trips in open areas.

Observer coverage in the scallop fishery is necessary to monitor groundfish bycatch, particularly yellowtail flounder bycatch in the Scallop Access Areas within the groundfish closed areas. It is also needed to monitor interactions between the scallop fishery and sea turtles. Through fiscal year (FY) 2005, the Northeast Fisheries Science Center (NEFSC) funded the necessary levels of observer coverage in the scallop fishery to evaluate bycatch of groundfish and sea turtles by utilizing carryover funding from FY 2004. However, in FY 2006, the NEFSC's level of funding for the observer program provided for only minimal observer coverage in the scallop fishery. This meant that observer coverage was constrained to levels less than what would be necessary for sufficient monitoring of the yellowtail flounder bycatch total allowable catch (TAC) in Scallop Access Areas and interactions between the scallop fishery and sea turtles in the Mid-Atlantic during June through October.

To provide for sufficient observer coverage to monitor the scallop fishery, NMFS re-activated the industry-funded observer program, wherein scallop vessels would be required to procure observer coverage from a NMFS-approved observer provider, on June 16, 2006 (71 FR 34842), via emergency rule. The emergency rule established a program that allowed observer service providers meeting specified criteria to be approved by NMFS. NMFS-approved observer service providers were then able to deploy observers on scallop vessels. The emergency rule also established the requirement that vessel owners are required to procure observers from a NMFS-approved observer service provider, and must pay for the observer. The emergency rule was extended through June 11, 2007 (71 FR 69073, November 29, 2006). Extending the emergency rule provided for observer coverage to continue to gather complete fishing year data on the scallop fishery and monitor fishery interactions with sea turtles in early spring.

The Council developed Amendment 13 to permanently re-active the industry-funded scallop observer program implemented in 2006. At its February 6–8, 2007, meeting, the Council voted to adopt Amendment 13 for submission to NMFS, and submitted the document and associated analyses on February 16, 2007. The Council held one public hearing on Amendment 13 on February 7, 2007, in Portsmouth, NH,

in conjunction with the Council's February meeting.

**Proposed Measures**

To provide for observer coverage in the scallop fishery when the Scallop Access Areas re-open on June 15, 2007, and into the future, this action would permanently re-activate the industry-funded scallop observer program that was implemented in 2006 via emergency rule. Like the emergency rule, this action would require scallop vessels to procure observer coverage from a NMFS-approved observer service provider. This action proposes criteria to be met in order for an entity to be approved by NMFS as an observer service provider, proposes the requirements for certification and decertification of observers for the scallop fishery, and proposes vessel notification requirements. Lastly, this action proposes to provide a framework mechanism to implement future adjustments to the scallop observer program.

Observer program requirements proposed in this action were developed to provide for the accurate and timely collection of unbiased data and to minimize conflict of interest issues. The proposed requirements were also designed to be consistent with national NMFS observer standards and were based upon NMFS observer program requirements in Alaskan fisheries, but modified to meet the needs and objectives of the Northeast Regional Office (NERO) and NEFSC. Since implementation via emergency rule in June 2006, the proposed industry-funded observer program has been successful, as it provided sufficient observer coverage for the scallop fishery and allowed NMFS to maintain sufficient operational standards and data quality control.

*Observer Service Provider Requirements*

This proposed action would allow any entity to become an observer service provider if it meets the proposed approval and responsibilities criteria. Potential observer service providers would be required to submit an application containing detailed information such as contact information, description of past experience with placing individuals in remote field and/or marine environments, evidence of adequate insurance to cover injury, liability and accidental death for observers during employment, and proof of compensation for observers while employed that meet or exceed Department of Labor guidelines. Entities interested in being included on the list of NMFS-approved observer service providers would be required to submit an application with the information proposed in the regulatory text of this action. Upon receipt of an application, NMFS would provide all potential observer service providers with an estimated number of observer sea days for this fishing year under the proposed program. Additionally, a planned schedule of observer deployments would be posted on this NOAA website: *http://www.nefsc.noaa.gov/femad/fsb/*. NMFS would notify candidate observer service providers of their approval or disapproval within 15 days of its receipt of their applications. If approved, the observer service provider's name would be added to the list of NMFS-approved observer service providers.

Observer service providers would be required to comply with all observer support, deployment logistics and limitations, communication, training, reporting, and conflict of interest requirements proposed in the regulatory text of this action. Observer service providers would also be responsible for setting the daily cost of observer coverage on a vessel. NMFS would continue to be responsible for determining the reduced DAS accrual rate and TAC for the set-aside program to defray the cost of observer coverage through biennial specifications. This proposed NMFS-approval process would maintain quality control of the data collected, but would not have potential conflicts with augmentation of appropriations law and policy.

This action proposes a few minor changes from the observer service provider requirements implemented by emergency rule. The cost of training/certifying scallop observers is borne by NMFS. To facilitate cost-effective training/certification, this action proposes that a minimum class size of eight observers, which may be split among multiple observer service providers, be required for the scallop observer training class operated by the Northeast Fisheries Observer Program (NEFOP). Training classes with fewer than eight participants would be delayed until at least eight participants were enrolled. This action also proposes that an approved observer service provider would be required to maintain in its employ at least eight observers that had been certified through the scallop observer training class operated by NEFOP. The emergency rule implemented an observer service provider requirement that an observer's first deployment shall be on a Scallop Access Area trip and that the resulting data be edited and approved by NMFS prior to any further deployments. Specifying details of new observer's first deployment was designed to provide the necessary oversight to ensure the collection of timely and accurate data. However, NEFOP has learned that requiring an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments, is sufficient for quality control, and that requiring an observer's first deployment be on a Scallop Access Area trip may limit the availability of observers to provide coverage on scallop trips to open areas. Therefore, the requirement that an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments is proposed in this action, but the requirement that an observer's first deployment shall be on a Scallop Access Area trip is not proposed in this action.

*Observer Certification Requirements*

This action proposes that employees of observer service providers must meet the NMFS National Minimum Eligibility Standards available at *http://www.st.nmfs.gov/st4/nop/* and must pass the NEFOP training course and be physically and mentally capable of carrying out the responsibilities of an observer. NMFS has the authority to review observer certification and issue observer certification probation and/or decertification if warranted. One minor addition to the observer certification requirements implemented by emergency rule is that this action proposes that all observers would be required hold a current Red Cross (or equivalent) cardiopulmonary resuscitation certificate.

*Removal/Decertification Requirements*

This proposed action would specify criteria and protocols for removal of an observer service provider from the list of NMFS-approved observer service providers and the probation and decertification of an observer.

*Vessel Requirements*

Proposed in this action are general requirements for scallop vessels, notification procedures, and requirements of the vessel if it is selected to carry an observer. Vessels are responsible for paying the cost of a observer, regardless of whether the vessel lands or sells scallops on that trip, and regardless of the availability of set-aside TAC or reduced DAS accrual rate.

The emergency rule required that vessels contact NMFS prior to the 25th day of the month preceding the month in which it intends to fish. This requirement was designed by NMFS to

provide NEFOP with a estimate of fishing effort to expect in the following month, so that observer coverage needs could be met. However, NEFOP has found that it does not need this provision to meet coverage needs; therefore, NMFS is not proposing that notification requirement in this action.

*Future Adjustments to the Observer Program*

Lastly, this action proposes a framework mechanism to implement future adjustments to the scallop observer program. Under the Scallop FMP, and in accordance with the Administrative Procedure Act, the framework process allows for abbreviated rulemaking if the Secretary of Commerce finds good cause to waive the requirement for a proposed rule and opportunity for public comment. Currently, adjustments to the observer program must be made through an amendment to the Scallop FMP. Providing for a framework mechanism in the Scallop FMP to make adjustments to measures implemented for the observer program would allow the Council more flexibility to develop improvements to the observer program.

Public comments are being solicited on Amendment 13 and its incorporated documents through the end of the comment period, May 18, 2007, stated in the notice of availability (NOA) for Amendment 13 (72 FR 12749, March 19, 2007). Public comments on the proposed rule must be received by May 18, 2007, the end of the comment period specified in the NOA for Amendment 13, to be considered in the approval/disapproval decision on the amendment. All comments received by May 18, 2007, whether specifically directed to Amendment 13 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 13. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 13. To be considered, comments must be received by close of business on the last day of the comment period.

Current scallop observer program regulations, implemented via emergency rule, will expire on June 11, 2007. This action proposes to make minor modifications to those regulations and make them permanent.

**Classification**

At this time, NMFS has not determined that the amendment this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

This proposed rule maintains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), previously approved under control number 0648–0546 in conjunction with the emergency action and currently under review for renewal. If approved by OMB, the requirements under 0648–0546 would remain in place even after the expiration of the emergency rule for use under the authority of Amendment 13, provided Amendment 13 is approved and implemented. These requirements apply to entities interested in becoming NMFS-approved observer service providers and to those observer service providers approved by NMFS and providing observer services to the scallop fishery. Public reporting burden for these collections of information are estimated to average as follows:

1. Application for approval of observer service provider - 10 hr per response;
2. Applicant response to denial of application for approval of observer service provider -10 hr per response;
3. Observer service provider request for observer training - 30 min per response;
4. Observer deployment report - 10 min per response;
5. Observer availability report - 10 min per response;
6. Safety refusal report - 30 min per response;
7. Submission of raw observer data - 5 min per response;
8. Observer debriefing - 2 hr per response;
9. Biological samples - 5 min per response;
10. Rebuttal of pending removal from list of approved observer service providers - 8 hr per response;
11. Vessel request to observer service provider for procurement of a certified observer - 25 min per response; and
12. Vessel request for waiver of observer coverage requirement - 5 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*,or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section. A copy of this analysis is available from the Council (see **ADDRESSES**) or NMFS at *http://www.nero.noaa.gov*. A summary of the analysis follows:

*Statement of Objective and Need*

The objective of this action is to re-activate the industry-funded observer program for the scallop fishery. Observer coverage is necessary in the scallop fishery to monitor bycatch of finfish and interactions with endangered and threatened species. The need for this action is to provide a mechanism to approve observer service providers so that the set-aside program can be utilized to help defray costs of carrying the necessary level of observers in the scallop fishery. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

*Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

The vessels in the scallop fishery could be considered small business entities because all of them grossed less than $4 million, according to the dealer's data, for 2004 to 2006. The proposed action would affect vessels with limited access and general category scallop permits. According to the recent permit data, there were 318 vessels that obtained full-time limited access permits in 2006, including 55 small-dredge and 14 scallop trawl permits. In the same year, there were also 32 part-time and 1 occasional limited access permit in the scallop fishery. In addition, 2,501 permits were issued to vessels in the open access general category and over 500 of these vessels landed scallops during the last 2 years. These numbers could change as the

fishing year progresses. Based on this information, the proposed action is expected to have impacts on a substantial number of small entities. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. It maintains requirements approved in conjunction with the emergency action.

*Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

Proposed Action

Previous scallop regulatory actions established provisions that impose some cost on vessels that participate in the scallop fishery by requiring vessels to carry and pay for observers on some trips. Compliance costs associated with the observer coverage can be minimized through the set-aside (i.e., TAC and DAS, depending on fishing area) that will provide compensation to vessel owners that have paid for observers. This action re-activates the mechanism that allow vessels to offset the costs of observer coverage and harvesting additional scallops from the set-aside. The net impacts of the observer program on vessels that participate in the scallop fishery will depend on scallop prices, trip costs, observer costs, and the TAC or reduced DAS accrual rate provided by NMFS. The analyses presented in Amendment 13 showed that, in some circumstances, observer coverage could reduce crew and vessel income by extending the trip and increasing the trip costs, especially for vessels with a lower catch rate per DAS. But in most cases, overall costs due to the observer coverage will be minimized, and may even yield positive economic benefits, due to the compensation that would be provided by NMFS.

The average total revenue for a general category vessel was $139,755 for the first 11 months of the 2006 fishing year, $249,167 for fishing year 2005, and $260,942 for fishing year 2004. Assuming that the cost of an observer would be $800 per day-at-sea (or $33.30 per hour, slightly higher than the $775 paid by vessels during the 2006 fishing year), average observer costs per general category vessel were estimated to be about $1,440 per trip in 2006. A cost of $1,400 per vessel for the year, assuming that each vessel carries an observer on only one trip, would amount to about 1 percent of total revenue. Similarly, the average total revenue of a limited access vessel was $803,873 for the first 11 months of the 2006 fishing year, $1,072,991 for fishing year 2005, and $988,401 for fishing year 2004. Average observer costs per limited access vessel were $6,560 per trip in 2006. Again, assuming that each vessel carries an observer on only one trip, observer cost would amount to less than 1 percent of the total revenue. (These are the amounts paid to the observer provider and do not include compensation through TAC or DAS set-asides.) Because of the set-aside, compliance costs to scallop vessels are expected to be considerably less than these amounts, under most circumstances. However, as described previously, if there is no set-aside, or no remaining set-aside, to help pay for the observer coverage, the vessels would be responsible for paying the observer, regardless of whether the vessel lands or sells scallops on that trip. This has been the process since the set-aside program was implemented in 1999, but NMFS usually distributes the set-aside such that the majority, if not all trips with an observer aboard, are at least partially compensated.

Economic impacts on scallop vessels, under several scenarios for both limited access and general category vessels, were analyzed in the IRFA for Amendment 13. Scenarios are based on set variables (i.e., trip costs, cost of observer, and the compensation (either TAC or DAS) provided by NMFS for carrying an observer) and fluctuating variables (i.e., landings per unit effort, price of scallops). While TAC compensation is provided by NMFS, vessels must incur additional costs to harvest the compensation TAC. Economic impacts on vessels in the scallop fleet are analyzed in the IRFA by considering set variables, fluctuating variables, and whether or not a vessel carries an observer for a trip. Although the IRFA in Amendment 13 analyzes several scenarios, the results are summarized as follows:

For limited access vessels, fluctuating variables in the assumptions include: Landings per unit effort (LPUE) ranging from 1,800 lb (816.5 kg) per DAS to 800 lb (362.9 kg) per DAS and scallop price ranging from $7.60 per lb to $6.00 per lb. Given the highest LPUE and highest price, a vessel's income could be expected to increase by about $9,280 with an observer onboard (from $61,560 without an observer, to $70,840 with an observer). A vessel's crew income could be expected to increase by about $10,722 with an observer (from $63,540 without an observer, to $72,282 with an observer). The increase in income when carrying an observer is due to the compensation for carrying an observer, either additional pounds (400 lb (181.4 kg) per day) or DAS (0.15 reduced accrual rate in open areas). With an LPUE of 800 lb (362.9 kg) per DAS and a price of $7.60 per lb, a vessel's income could be expected to decline by about $32 with an observer onboard (from $24,624 without an observer to $24,592 with an observer). A vessel's crew income could be expected to decline by about $1,619 with an observer (from $19,566 without an observer, to $17,947 with an observer). These decreases in income result from extended trip lengths to catch the additional pounds to pay for an observer.

General category vessels are subject to the industry-funded observer provisions only when fishing in Scallop Access Areas and are compensated with additional pounds per trip. With a compensation of 400 lb (181.4 kg) per day, a vessel would cover observer costs of $1,600 by fishing 2 days and landing 1,200 lb (544.3 kg) of scallops (400 lb (181.4 kg) for the trip and 800 lb (362.9 kg) as compensation). At a price of $6.00 per lb, the vessel would generate $7,200 revenue from scallops, and would increase total crew income by $1,410 and vessel income by $1,440. At a scallop price of $7.60 per lb, vessels and crews could be expected to increase revenues even at a lower compensation rate. By fishing more days, a vessel could experience even more gains in revenue. For example, by fishing 3.5 days and receiving 1,600 lb (725.7 kg) in compensation, total scallop revenue could increase to $15,200 at a price of $7.60 per lb, increasing both crew and vessel income by over $4,000. These positive impacts on vessels are due to the fact that general category vessels are not allowed to land more then 400 lb (181.4 kg) on regular trips and, even at a price of $6.00 per lb, a compensation amount of 400 lb (181.4 kg) could bring $2,400 in revenue, exceeding the cost of the observer and trip costs. However, if compensation pounds were set too low, or if prices decline below $6.00 per lb, the economic gains from compensation for carrying an observer could decline.

Observer coverage would improve information that could be used to reduce the amount of finfish bycatch and the level of sea turtle takes in the scallop fishery. This could eliminate the need for more conservative management measures in the future that may

potentially have adverse impacts on the scallop industry. For these reasons and the reasons described above, the benefits of the observer program are expected to exceed costs of this program and have positive economic impacts on vessels participating in the scallop fishery.

The proposed adjustment mechanism to the observer program through framework action could be used to reduce the differential impacts of this program on some vessels, such as by implementing different TAC amounts and DAS accrual rates for smaller vessels. The adjustments through framework could also provide more flexibility to the program in determining the amount of set-aside or the way the observer costs are shared among the vessels in the scallop fleet.

Participation by potential observer service providers is voluntary and, since no Federal action is requiring participation, further assessment of the potential impacts on these entities is not required. No significant quantifiable impacts on scallop prices and change in benefits to the consumers are expected from this action, since the observer program is not expected to impact scallop landings in a significant way.

Non-selected Alternatives

The proposed action would permanently re-activate the industry-funded observer program in the Scallop FMP through a set-aside program that would help vessel owners defray the cost of carrying observers. The alternatives to the proposed action do not provide for an industry-funded observer program. Under the no action alternative, the emergency rule would expire and no regulations would be implemented allowing for funding in addition to that provided by NMFS under its existing observer program. However, as discussed previously, NMFS's current and anticipated funding would only provide for minimal observer coverage in the scallop fishery. Therefore, under the no action alternative, observer coverage levels would likely be less than sufficient for monitoring the yellowtail flounder bycatch TAC in Scallop Access Areas and interactions between the scallop fishery and sea turtles in the Mid-Atlantic during June through October. Due to implications of having minimal observer coverage (e.g., earlier closures based on less reliable bycatch estimates, closures to prevent interactions with sea turtles), no action would likely result in negative economic impacts (e.g., reduced fishing opportunity, reduced harvest) for the scallop industry in both the short and long-term. Without an industry-funded observer program, adequate observer coverage for the scallop fishery could only occur if provided wholly by NMFS. However, because of resource constraints, it is not realistically possible for NMFS to wholly fund an adequate level of observer coverage for the scallop fishery.

The set-aside program is already an established provision in the scallop regulations and the measures in this proposed rule would only establish a mechanism to enable the set-asides to be utilized by the industry as compensation for having paid for observer coverage. Measures to modify and improve the set-aside program are outside the scope of Amendment 13. During the Council's public hearing on Amendment 13, the scallop industry expressed concern that the proposed action would not provide a complete solution to the economic impacts associated with having to pay for observers under the existing set-aside program. The scallop industry also acknowledged that there were no other alternatives, besides the proposed and no action alternatives, that could be considered in Amendment 13. Based on this public input, this action also proposes a mechanism to allow future modifications to the observer program to be implemented by framework action. Providing for a framework mechanism in the Scallop FMP to make adjustments to the observer program would allow more flexibility to address industry's concerns with the program.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 2, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, paragraph (b)(4) is revised to read as follows:

### § 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(4) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

* * * * *

3. In § 648.11, paragraphs (a) introductory text and (a)(1) are revised, and paragraphs (g), (h), and (i) are revised to read as follows:

### § 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (g) of this section.

(1) For the purpose of deploying at-sea observers, sea scallop vessel owners are required to notify NMFS of scallop trips as specified in paragraph (g) of this section. Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit, or reduced accrual rate of DAS.

* * * * *

(g) *Atlantic sea scallop observer program*—(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (b) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. All sea

scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) *Vessel notification procedures.* For the purpose of determining if an observer will be deployed on a vessel for a specific trip, the owner, operator, or manager of a vessel issued a limited access permit fishing in open areas or in the Sea Scallop Area Access program specified in § 648.60, or the owner, operator, or manager of a vessel issued a general category scallop permit and fishing in the Sea Scallop Area Access program specified in § 648.60, is required to comply with the following notification requirement. For each scallop trip, the vessel owner, operator, and/or manager shall notify NMFS by telephone, using the phone number provided by the Regional Administrator in the Small Entity Compliance Guide, and provide the following information: Vessel name and permit number; contact name and number; date and time of departure; port of departure; area to be fished (either open areas or the specific Sea Scallop Access Area); and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(3) *Selection of scallop fishing trips for observer coverage.* Based on predetermined coverage levels for various sectors of the scallop fishery that are provided by NMFS in writing to all observer service provider approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver.

(4) *Procurement of observer services by scallop vessels.* (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the Northeast Fisheries Observer Program (herein after NMFS/NEFOP certified) from an observer service provider approved by NMFS under paragraph (h) of this section. A list of approved observer service providers shall be posted on the NOAA/NEFOP website at *http://www.nefsc.noaa.gov/femad/fsb/*. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 72–hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 72 hr of the advance notification to the provider due to the unavailability of an observer, may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners, operators, and/or managers of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area trips or additional scallop catch per day in Access Areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60. Observer service providers are responsible for setting the daily rate for observer coverage on a vessel. NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in an access area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified by Small Entity Compliance Guide of any DAS accrual rate and additional pounds of scallops determined by the Regional Administrator. The Regional Administrator may adjust the DAS accrual rate and additional pounds of scallops, if necessary, based on economic conditions of the scallop fishery. Vessel owners and observer providers shall be notified of any such adjustments through a letter.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General.* An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS's web page, as specified in paragraph (g)(4) of this section.

(2) [Reserved]

(3) *Contents of application.* An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers (with resumes) on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class. The NEFOP training has a minimum class size of eight individuals; which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will not be processed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation.* (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS's website specified in paragraph (g)(4) of this section and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list as an approved observer service provider.

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An approved observer service provider must maintain in its employ a minimum of eight NMFS/NEFOP certified observers in order to remain approved. Should a service provider's employed NMFS/NEFOP certified observers drop below eight, the provider must supply the appropriate number of candidates to the next available training class. Failure to do so shall be cause for suspension of the provider's approved status, until rectified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS's website specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer

on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hr a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training;a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports*—(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip for which the deployment of an observer has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal, or failure to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hr of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS's discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. An observer that is at sea during the 2–week period must contact NMFS upon his or her return, if requested to do so by NMFS.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5 pm, Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hr of the event or within 24 hr of learning of the event.

(viii) *Refusal to deploy an observer.*—(A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels, other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers may not prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on

which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website: *http://www.st.nmfs.gov/st4/nop/*.

(2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS website specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certification.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the website at: *http://www.nefsc.noaa.gov/femad/fsb/*.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to the observer containing the decertification and to the approved observer service provider via certified mail at their most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

4. In § 648.51, paragraphs (c)(4) and (e)(3)(iii) are revised to read as follows:

**§ 648.51 Gear and crew restrictions.**

* * * * *

(c) * * *

(4) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

(e) * * *

(3) * * *

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

5. In § 648.55, paragraph (e)(31) is revised, and paragraph (e)(32) is added to read as follows:

**§ 648.55 Framework adjustments to management measures.**

* * * * *

(e) * * *

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations.

(32) Any other management measures currently included in the FMP.

* * * * *

6. In § 648.60, paragraph (a)(2) is revised to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) * * *

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4) and vessel notification requirements specified in § 648.11(g) for observer deployment.

* * * * *

[FR Doc. E7–6489 Filed 4–5–07; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 648

**[Docket No. 070322066–7066–01; I.D. 031307C]**

**RIN 0648–AU51**

## Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Fisheries; Regulatory Amendment to Reconcile State and Federal Commercial Fishing Vessel Permit Programs

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to modify the permitting and vessel replacement provisions for Federal limited access permit programs of the Northeastern United States, excluding American lobster. This action is intended to prevent fishing effort beyond what is accounted for in the FMPs for each fishery and to reinforce efforts undertaken by state fishery management agencies at targeting regulations specifically for vessels that participate wholly in state water fisheries. These measures are necessary

to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by May 7, 2007.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- E-mail: *NERO.Permit@NOAA.gov*. Include in the subject line the following: Comments on the Proposed Rule for Permit Program Reconciliation.
- Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the Proposed Rule for Permit Program Reconciliation.''
- Fax: (978) 281–9135.

Copies of this regulatory amendment, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. A summary of the IRFA is provided in the Classification section of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220, fax: (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

State and Federal fishery management plans may differ in reporting requirements, participation restrictions, and overall strategies to control fishing mortality. These programs may be successful in achieving their objectives only when a vessel fishes in one program, either state or Federal, for an entire permit year because the management measures are typically based on analyses of fishing effort, and where that effort is expected to take place. Federal regulations are rarely the exclusive authority governing federally permitted commercial fishing vessels. Vessels that have both Federal and state permits are bound by the more restrictive of the regulations in effect. In contrast, vessels without a valid Federal permit can be permitted by a state to fish exclusively in state territorial waters, and such vessels do not have to comply with Federal fishing regulations.

Current regulations require that federally permitted fishing vessels must abide by Federal fishing regulations, regardless of whether the vessel is fishing in state or Federal waters. However, vessels that delay getting their Federal permit may be authorized to participate exclusively in state water fisheries under state rules and regulations. Although splitting fishing effort between state and Federal waters may have repercussions across all federally managed fisheries, the impact of vessels splitting fishing effort between state and Federal programs is thought to be greatest in Federal fisheries utilizing a fishing effort control program referred to as a days-at-sea (DAS) program, which is common in Federal fisheries management in New England. This type of program limits the amount of days that a federally permitted commercial fishing vessel can fish each year. Under current Federal regulations, a DAS vessel could increase its overall effort by fishing in state waters outside of the DAS program prior to renewal of its Federal DAS permit. However, state regulations could prohibit this practice, as in the case of the Massachusetts groundfish fishery. Although it is estimated that less than 10 percent of federally permitted vessels currently exploit this ''loophole,'' there is concern that this practice could expand, especially should further reductions in DAS be necessary. Thus, the purpose of this action is to remove an unintended consequence of having a Federal permit renewal system that effectively allows for a temporary relinquishment of a Federal limited access permit.

This action would apply only to Federal limited access and moratorium commercial fishing vessel permit holders. The terms (limited access( and (moratorium( in regards to Federal permit programs are synonymous. A limited access permit is a permit that an individual has applied for and received based on qualification criteria set forth in the FMP. By applying for and receiving a limited access permit, a vessel owner has agreed to abide by a fishing program that, in turn, grants exclusive fishing privileges. Under current regulations, a Federal limited access permit must be renewed on an annual basis. If the permit is not issued within 1 year of the last day of the permit year for which it was valid, the permit is cancelled and rendered ineligible for renewal. In general, limited access permits were developed in order to control fishing effort in various fisheries that are, or were, being harvested at rates above the maximum sustainable yield for the fishery. These limited access permits often have privileges, such as higher trip limits, or exclusive access to a particular fishery. As a result, these permits are considered valuable. Open access permits, on the other hand, can be applied for with minimum qualification criteria, and received on an annual basis without any deadlines. A vessel owner may elect to not apply for an open access permit in one year, and still be eligible to receive the permit again 2 years later. Open access permits often do not carry the same exclusive fishing privileges associated with limited access permits and thus do not carry the same value.

In order to maintain current ownership and vessel information, NMFS requires that vessel owners submit documentation on an annual basis prior to receiving the applicable limited access permit(s) for the permit year in question. This annual ''renewal'' or ''reissuance'' also serves as a way to ensure compliance with vessel reporting requirements for fishing trips taken during the year prior, since the new permit is not issued until these reports are received by NMFS. One aspect of a limited access permit is eligibility. Eligibility is the permit privilege a vessel owner maintains to renew annually his/her vessel(s limited access permit. Currently, eligibility to renew a limited access permit remains in place for up to 11 months after the start of the new permit year. Until such time that the vessel renews its limited access permit, its Federal fishing privileges are suspended. It was never the intention of the current regulations to allow a vessel to participate wholly in a state fishing program in which it would not otherwise be allowed to participate under the conditions of the Federal permit program for which it is eligible, while the vessel(s Federal permits are suspended. Often this exclusive state waters activity is not reported directly to NMFS, whereas, under the conditions of the Federal limited access permit, such reporting would be required.

## Proposed Measures

This proposed action intends to remedy the situation described in the preceding paragraphs by making it a condition upon issuance of a limited access permit that the permit holder agrees that the vessel may not fish for or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent fishing year, or the permit either has been voluntarily relinquished or otherwise forfeited, revoked, or transferred from the vessel. This

condition of the limited access permit would be in effect for the entire duration of the permit's renewal eligibility period. For example, if an issued permit expired on April 30, 2006, a vessel owner would have until April 30, 2007, to be reissued the permit. Thus, the vessel owner would be subject to the permit condition through April 30, 2007. By participating in a Federal limited access fishing program, a vessel owner is agreeing to participate wholly in that program and be subject to all of its accompanying regulations until such time that the vessel owner is no longer eligible to renew his/her vessel(s limited access permit. Thus, the only aspect of the permit that is suspended until the permit renewal application has been processed is its fishing privilege, whether or not such activity occurs in state or Federal waters. This measure would impact the Federal limited access commercial fishing vessel permits issued by the NMFS Northeast Regional Office that are listed in Table 1. The second measure proposed under this action would limit the number of vessel replacements allowed during a permit year. This measure would also be applicable to all limited access vessels listed in Table 1. These measures are discussed separately below.

TABLE 1. LIST OF NORTHEAST REGION LIMITED ACCESS PERMIT CATEGORIES AFFECTED BY PROPOSED RULE

| FISHERY | LIMITED ACCESS PERMIT CATEGORIES |
|---|---|
| Atlantic Sea Scallop | 2, 3, 4, 5, 6, 7, 8, 9. |
| NE Multispecies | A, C, D, E, F, HA. |
| Monkfish | A, B, C, D, F, G, H. |
| Maine Ocean Quahog | 7. |
| Summer Flounder | 1. |
| Scup | 1. |
| Black Sea Bass | 1. |
| Squid, Mackerel, Butterfish | 1, 5. |
| Golden Tilefish | A, B, C. |
| Atlantic Deep-Sea Red Crab | B, C. |

*Limited Access Permit Fishing Prohibition After Expiration and Prior to Renewal*

Under this proposed action, a commercial fishing vessel that was issued, or is in possession of, a valid Federal limited access fishing permit at the end of the permit year immediately preceding the current permit year, would be prohibited from landing any fish managed under 50 CFR part 648 for which the vessel would be authorizedunder the conditions of the limited access permit(s), unless at least one of the following conditions is met:

- The vessel owner has renewed the Federal limited access permit(s) for the current permit year;
- The vessel owner has voluntarily permanently relinquished the vessel(s Federal limited access permit(s); or
- The vessel has been replaced by another vessel and the permit eligibility has moved to the new vessel or was placed into Confirmation of Permit History (CPH).

In other words, a vessel owner who is eligible to renew his/her vessel(s Federal limited access permit would be prohibited from fishing for and/or possessing any fish for which the vessel would be authorized under the respective limited access permit, from any waters, unless the limited access permit(s) has been renewed or removed from the vessel. All vessel reporting requirements for the limited access permits the vessel is eligible to renew would remain in effect unless the limited access permit(s) have been relinquished or transferred to another vessel or CPH. This would include completed fishing vessel trip reports (VTRs) for the entire period that the vessel was issued or eligible to be issued a limited access permit.

Under this action, a Federal limited access permitted vessel would be prohibited from obtaining a Federal open access fishing permit until such time that the limited access permits have been renewed, relinquished, or transferred. Federal open access and limited access permits may be renewed and applied for at the same time.

This action would thus commit a limited access vessel to a specific fishery program (state or Federal) prior to engaging in any fishing activities. This measure would eliminate a loophole in the regulations currently exploited by a minority of vessel owners and/or operators and would potentially prevent more vessel owners and/or operators from taking advantage of this situation in the future.

*One-Time Vessel Replacement Per Permit Year*

This action would allow only one transfer of limited access permits per permit year, unless the vessel being replaced has been rendered inoperable and not repairable, due to unforeseen circumstances. The intent of this measure is to deter vessel owners from moving limited access permits off their primary vessel prior to the start of a permit year and then moving them back onto their primary vessel after the primary vessel has fished part of the permit year in a state waters fishery program. Under this scenario, a vessel owner would not be able to move the permits back onto the secondary vessel prior to the start of the following permit year. It was not foreseen that the flexibility in replacing a fishing vessel granted via the current regulation would be abused in order to circumvent fishing regulations. The current vessel replacement measures were implemented in order to rectify previous vessel replacement measures, which could potentially have compromised vessel safety by diminishing a vessel owner's flexibility to purchase and replace a vessel in a timely manner. The proposed regulations would maintain this flexibility while ensuring that the vessel replacement program is not utilized to avoid Federal regulations for a period of time.

**Classification**

At this time, NMFS has not determined that this proposed rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble to this proposed rule and is not repeated here. There are no Federal rules that may duplicate, overlap, or conflict with this proposed rule. The proposed action would modify the requirements for vessels issued or eligible to be issued certain Federal limited access commercial fishing vessel permits in the Northeast Region. Current regulations allow the development of such measures, provided they are consistent with the FMP objectives.

The proposed alternative to modify the limited access permit regulations was compared to the No Action alternative and an alternative that would issue a (reserve permit( in the event a permit renewal application was not received by a set deadline. The No Action alternative would result in the continuation of the current management measures.

*Description and Estimate of the Number of Small Entities to which this Proposed Rule would Apply*

Approximately 3,700 vessels could be affected by this action. In all, these participants generate close to $ 1 billion annually from the sale of fish and shellfish. The Small Business Administration (SBA) size standard for small commercial fishing entities is $ 4.0 million in gross receipts and would apply to all limited access permit holders affected by this action. Therefore, this proposed rule would not have a differential impact between small and large entities.

Data compiled by NMFS from the 2004 fishing year (FY) indicate that 64 vessels delayed their permit renewal and made landings during the time the Federal permit was invalid. In the same year eight vessels were replaced that reported landings later in the same fishing year. Thus, this rule would potentially impact 72 vessels out of the over 3,700 limited access vessels in the NE Region. An average of 94 percent of vessel owners here renewed their permits by May 1 over the last few years. With this level of compliance, only about 370 entities, including the aforementioned vessels that reported landings during this time period, would likely be affected by the permit renewal portion of this action.

Federal permit data compiled by the NMFS NE Regional Office indicate that 64 vessels delayed the renewal of their Federal limited access permits in 2004 and also had landings both with and without their Federal permit. In the NE multispecies fishery, where the practice is most acute, between 2002 and 2005 only nine vessels repeatedly delayed the renewal of their Federal limited access NE multispecies permit. In addition to vessels delaying their permit renewal, some vessels are replaced by another fishing vessel during the fishing year. The former vessel may then continue to fish outside of Federal regulations in state waters. Across all limited access fisheries, about eight vessels per year land fish as a result of replacing a vessel and then continuing to fish with the old vessel in 2004.

*Economic Impacts of this Proposed Action*

Analyses of data showed that only a small number of vessels currently exploit the loophole the proposed action would fix. This action would affect all limited access fisheries in the NE Region. However, a fishery of particular concern due to significant state water and Federal water components, is the fishery that catches Gulf of Maine and Georges Bank cod stocks in the NE multispecies fishery. Thus, for the purposes of this economic analysis, the impact to the vessel owners active in the limited access multispecies fishery is considered the upper bound of economic impacts to all the affected fisheries. In 2004, an average of 7,855 lb (3,563 kg) (86,409 lb (39,194 kg) total) of cod was landed by 11 fishing vessels (approximately 4,000 NE multispecies limited access permits were issued in FY 2004) fishing exclusively under state fishing regulations by vessels that were eligible for a limited access permit in the previous permit year. At an ex-vessel price of $2.50 per pound for cod, this action could conceivably reduce annual revenues of a given vessel owner by $36,000. However, there is no indication from this analysis that these same fish would not have been caught by state-permitted vessels that are not eligible for a limited access permit, nor that this same quantity of fish would not have been caught by a federally permitted limited access commercial fishing vessel. The total ex-vessel value of cod landed in 2004 was $21,690,850. Thus, this action could cause a slightly negative economic impact of less than 1 percent to the commercial groundfish industry. In 2004, other DAS fisheries such as monkfish and sea scallop had average landings per limited access eligible vessel of 5,852 lb (2,654 kg) whole weight (N= 21), and 3,270 lb (1,483 kg) (N=9) landed weight, respectively. For a monkfish vessel, this would result in a decrease in revenue of approximately $8,193 (using an average monkfish ex-vessel price of $1.40 per lb whole weight). This would result in a decrease in revenue for a given scallop vessel of approximately $23,707 (using a scallop ex-vessel price of $7.25 per lb landed weight). The total ex-vessel value of the monkfish and scallop fisheries were $33,331,944 and $320,696,436, respectively, in 2004. All other limited access fisheries with an inshore (state waters) stock component are managed through a hard total allowable catch (TAC). These TAC programs are managed on either a coast-wide or state-by-state basis. Federal TAC programs, for the most part, are equivalent to the state programs for each fishery. When this equivalency exists there is no advantage for a vessel owner eligible for a Federal limited access permit to delay his/her Federal permit renewal in order to fish exclusively under a state permit. However, in the absence of Federal and state equivalency in a TAC program (e.g., the closure of federally controlled waters, lower Federal possession limits, etc.) there could be an advantage to splitting fishing effort between state and Federal fisheries in the same fishing year.

*Economic Impacts of Alternatives to the Proposed Action*

In addition to the proposed alternative described in the preamble, a second, non-preferred alternative, and the status quo alternative were also analyzed. The status quo alternative would leave the current regulations in place. The second, non-preferred alternative would also modify the current Federal commercial fishing vessel limited access permit renewal process; however unlike the preferred alternative, this alternative places a deadline on the limited access permit renewal for the permit year in question. Under this alternative, if the vessel owner misses the application deadline the vessel would not lose its eligibility to apply for the Federal limited access permit for the following permit year. If the vessel owner fails to submit a complete renewal application 30 days prior to the start of the permit year for which the permit is required, the vessel owner has, by default, elected to either fish exclusively in state waters, or not to fish at all. A complete application received after 30 days prior to the start of the permit year for which the permit is required would reserve that vessel owner's eligibility to apply for Federal permits the following fishing year through the issuance of a Federal ''Reserve Permit.'' If the commercial fishing vessel does not apply for and receive either a limited access permit or a reserve permit during a permit year it would become ineligible to receive the limited access permit at any future time. The one-time per year vessel replacement provision is the same as outlined in the Agency's preferred alternative.

The second non-preferred alternative, would have the same reduction in ex-vessel value that was outlined in the section of this Classification section detailing the preferred alternative. However, this alternative would have a greater economic impact in that vessel owners would be prohibited from renewing their Federal limited access permit at any time during the permit year, if they failed to renew their permit prior to the start of the permit year. The 2004 data analyzed indicated that approximately 2 percent (65 entities) of limited access permit holders delayed the renewal of their permits. It is not feasible to identify the total landings and ex-vessel value of these landings to determine if this 2 percent contribute a greater or lesser amount to annual fishery landings than an average vessel.

The economic impacts of the non-preferred alternative are greater than those under the status quo and preferred alternatives. It is estimated that the status quo alternative would realize a small short-term positive economic impact to the fishing industry due to a slight increase in landings. It is highly probable that this increase, especially if more vessels take advantage of fishing in both state and Federal fishing programs in the same permit year, would be offset in the future by a decrease in landings due to more restrictive fishing regulations required after target fishing mortality rates are not realized.

**Public Reporting Burden**

This proposed rule contains collection of information requirements previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) under OMB control numbers 0648–0202 and 0648–0212. The current expiration dates for the reporting requirements under these collections are October 31, 2009, and September 30, 2008, respectively. The public(s reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 2, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for ''Permit year'' is added, in alphabetical order, to read as follows:

**§ 648.2 Definitions.**

* * * * *

*Permit year* means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year;

(2) For all other fisheries in this part, from May 1 through April 30 of the following year.

* * * * *

3. In § 648.4, paragraphs (a)(1)(i)(B), (a)(1)(i)(E), introductory text (a)(1)(i)(K), and (b) are revised to read as follows:

**§ 648.4 Vessel permits.**

* * * * *

(a)* * *

(1)* * *

(i)* * *

(B) *Application/renewal restrictions.* All limited access or moratorium permits established under this section must be issued on an annual basis by the last day of the permit year for which the permit is required, unless a confirmation of permit history (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. Application for such permits must be received no later than 30 days before the last day of the permit year. Failure to renew a limited access or moratorium permit in any permit year bars the renewal of the permit in subsequent years. If a vessel is issued more than one limited access or moratorium permit under this section, these permits will be regarded as a permit suite and must be renewed together in accordance with this paragraph (a)(1)(i)(B). Open access permits may not be issued to a vessel eligible to renew a limited access or moratorium permit until such time that the vessel(s limited access or moratorium permit(s) are renewed, or the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section, or transferred from the vessel via a replacement vessel pursuant to paragraph (a)(1)(i)(E) of this section, or confirmation of permit history pursuant to paragraph (a)(1)(i)(J) of this section.

* * * * *

(E) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), an owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement per permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. To be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

* * * * *

(K) *Abandonment or voluntary relinquishment of a limited access or moratorium permit.* If a vessel's limited access or moratorium permit for a particular fishery is voluntarily relinquished to the Regional Administrator or abandoned through failure to renew or otherwise, no limited access or moratorium permit for that fishery may be reissued or renewed based on that vessel(s limited access or moratorium permit history or to any other vessel relying on that vessel(s limited access or moratorium permit history.

* * * * *

(b) *Permit conditions.* (1)(i) Any person who applies for and is issued or renews a fishing permit under this section agrees, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed); are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part, except tilefish, must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium; or a spiny dogfish or bluefish commercial vessel permit, must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A

state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

(ii) Any person who applies for or has been issued a limited access or moratorium permit on or after [EFFECTIVE DATE OF FINAL RULE] agrees, as a condition of the permit, that the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent fishing year, or the permit either has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(2) A vessel that is issued or renewed a limited access or moratorium permit on or after [EFFECTIVE DATE OF FINAL RULE] for any fishery governed under this section is prohibited from fishing for, catching, possessing, and/or landing any fish for which the vessel would be authorized under the respective limited access or moratorium permit in or from state and/or Federal waters in any subsequent fishing year, unless and until the limited access or moratorium permit has been issued or renewed pursuant to paragraph (a)(1)(i)(B) of this section and the valid permit is on board the vessel. This prohibition does not apply to a vessel for which the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

* * * * *

4. In § 648.14, paragraph (a)(31)(ii) is revised, and paragraphs (a)(178) and (a)(179) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(31) * * *

(ii) The NE multispecies were harvested by a vessel not issued a NE multispecies permit, nor eligible to renew or be reissued a limited access NE multispecies permit as specified in § 648.4 (b)(2), that fishes for NE multispecies exclusively in state waters;

* * * * *

(178) If eligible for re-issuance or renewal of a limited access or moratorium permit:

(i) Fish for, take, catch, harvest or land any species of fish regulated by this part for which the vessel is eligible to possess under a limited access or moratorium permit until the vessel has been issued the applicable limited access or moratorium permit by NMFS.

(ii) [Reserved]

(179) Attempt to replace a limited access or moratorium fishing vessel, as specified at § 648.4 (a)(1)(i)(E), more than one time during a permit year, unless the vessel has been rendered inoperable and non-repairable.

* * * * *

[FR Doc. E7–6490 Filed 4–5–07; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 72, No. 66
Friday, April 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

### Foreign Agricultural Service

### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

On March 22, 2007, the Administrator, Foreign Agricultural Service (FAS), denied a petition for trade adjustment assistance (TAA) that was filed on February 16, 2007, by the Burley Tobacco Growers Cooperative Association and the Burley Stabilization Corporation, representing burley tobacco producers in Kentucky, Tennessee, Virginia, North Carolina, West Virginia, Indiana, Ohio, and Missouri.

**SUPPLEMENTARY INFORMATION:** Upon investigation, the Administrator determined the predominant reason for the decline in the burley tobacco price was the termination of the Tobacco Buyout Program in 2005, and that imports did not contribute importantly to the decline in price. Therefore, the burley tobacco petition did not meet the statutory requirement that imports contributed importantly to a decline in producer price.

**FOR FURTHER INFORMATION, CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov*.

Dated: March 23, 2007.

**W. Kirk Miller,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. E7–6468 Filed 4–5–07; 8:45 am]

BILLING CODE 3410–10–P

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

On March 22, 2007, the Administrator, Foreign Agricultural Service (FAS), denied a petition for trade adjustment assistance (TAA) for avocados that was filed on February 17, 2007, by the California Avocado Commission.

**SUPPLEMENTARY INFORMATION:** Upon investigation, the Administrator determined that imports from Mexico for the November 1, 2005, through October 31, 2006, marketing year declined by 2 percent from the same period in 2005/2006. Since imports declined during the marketing year, the petition did not meet the increasing imports requirement, a condition required for certifying a petition for TAA.

**FOR FURTHER INFORMATION, CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov*.

Dated: March 23, 2007.

**W. Kirk Miller,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. E7–6469 Filed 4–5–07; 8:45 am]

BILLING CODE 3410–10–P

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

On March 22, 2007, the Administrator, Foreign Agricultural Service (FAS), denied a petition for trade adjustment assistance (TAA) for Michigan natural honey, white or lighter, that was filed on February 16, 2007, by a group of apiarists.

**SUPPLEMENTARY INFORMATION:** Upon investigation, the Administrator determined that prices did not decline by at least 20 percent for the most recent marketing year compared to previous 5-year average. During the 2005 marketing year, prices were 89.6 percent of the 5-year base average. Since producer prices did not decline by at least 20 percent during the most recent marketing year, the petition did not meet the price decline requirement, a condition required for certifying a petition for TAA.

**FOR FURTHER INFORMATION, CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov*.

Dated: March 23, 2007.

**W. Kirk Miller,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. E7–6463 Filed 4–5–07; 8:45 am]

BILLING CODE 3410–10–P

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

On March 22, 2007, the Administrator, Foreign Agricultural Service (FAS), denied a petition for trade adjustment assistance (TAA) that was filed on February 16, 2007, by the National Grape Cooperative Association, representing New York, Pennsylvania, and Ohio Concord juice grape producers.

**SUPPLEMENTARY INFORMATION:** Upon investigation, the Administrator determined that imports of grape juice and must, unfermented, not concentrated, from Canada did not contribute importantly to a decline in producer price. Therefore, the Concord juice grape petition did not meet the statutory requirement that imports contributed importantly to a decline in producer price.

**FOR FURTHER INFORMATION, CONTACT:** Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: trade.adjustment@fas.usda.gov.

Dated: March 23, 2007.

**W. Kirk Miller,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. E7–6471 Filed 4–5–07; 8:45 am]

**BILLING CODE 3410–10–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers Used for Publication of Legal Notices in the Southwestern Region, Which Includes Arizona, New Mexico, and Parts of Oklahoma and Texas

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that will be used by all Ranger Districts, Grasslands, Forests, and the Regional Office of the Southwestern Region to give legal notice for the availability for comments on projects under 36 CFR parts 215 or 217, and for opportunities to object to proposed authorized hazardous fuel reduction projects under 36 CFR 218.4. This notice also lists newspapers of record for the notice of initiation, notice of comment period, notice of objection period, notice of approval, and notice of adjustment of an ongoing planning process for plan amendments and revisions under 36 CFR 219.9 and 219.14 (2005 planning rule). Newspaper publication is in addition to mailings and direct notice made to those who have participated in the planning of projects or plan revisions and amendments by submitting comments and/or requesting notice.

**DATES:** Use of these newspapers for the purpose of publishing legal notice for a plan amendment decision that is subject to appeal under 36 CFR part 217, for a comment and project decision that may be subject to appeal under 36 CFR part 215, for opportunity to object under 36 CFR 218 and for planning notices on a plan revision or plan amendment under 36 CFR part 219 shall begin on the date of this publication and continue until further notice.

**ADDRESSES:** Southwestern Region, *ATTN:* Regional Appeals Assistant, 333 Broadway SE., Albuquerque, NM 87102–3498

**FOR FURTHER INFORMATION CONTACT:** Connie Smith, 505–842–3223.

**SUPPLEMENTARY INFORMATION:** Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper of record of which publication date shall be used for calculating the time period to file comment, appeal or an objection.

**Southwestern Regional Officer**

*Regional Forester*

Notices of Availability for Comment and Decisions and Objections affecting New Mexico Forests:—''Albuquerque Journal'', Albuquerque, New Mexico, for National Forest System Lands in the State of New Mexico and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting Arizona Forests:—''The Arizona Republic'', Phoenix, Arizona, for National Forest System lands in the State of Arizona and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting National Grasslands in New Mexico, Oklahoma, and Texas are listed by Grassland and location as follows: Kiowa National Grassland notices published in:—''Union County Leader'', Clayton New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma notices published in:—''Boise City News'', Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas notices published in:—''The Dalhart Texan'', Dalhart, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma notices published in:—''Cheyenne Star'', Cheyenne, Oklahoma. Black Kettle National Grassland in Hemphill County, Texas notices published in:—''The Canadian Record'', Canadian, Texas. McClellan Creek National Grassland in Gray County, Texas notices published in:—''The Pampa News'', Pampa, Texas.

**Arizona National Forests**

*Apache-Sitgreaves National Forests*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Alpine Ranger District, Black Mesa Ranger District, Lakeside Ranger District, and Springerville Ranger District are published in:—''The White Mountain Independent'', Show Low and Navajo County, Arizona.

Clifton Ranger District Notices are published in:—''Copper Era'', Clifton, Arizona.

*Coconino National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Mogollon Rim Ranger District, Mormon Lake Ranger District, and Peaks Ranger District are published in:—''Arizona Daily Sun'', Flagstaff, Arizona.

Red Rock Ranger District Notices are published in:—''Red Rock News'', Sedona, Arizona.

*Coronado National Forest*

Notices for Availability for comments, Decisions and Objections by Forest Supervisor and Santa Catalina Ranger District are published in:—''The Arizona Daily Star'', Tucson, Arizona.

Douglas Ranger District Notices are published in:—''Daily Dispatch'', Douglas, Arizona.

Nogales Ranger District Notices are published in:—''Nogales International'', Nogales, Arizona.

Sierra Vista Ranger District Notices are published in:—''Sierra Vista Herald'', Sierra Vista, Arizona.

Safford Ranger District Notices are published in:—''Eastern Arizona Courier'', Safford, Arizona.

*Kaibab National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, North Kaibab Ranger District, Tusayan Ranger District, and William Ranger District Notices are published in:—''Arizona Daily Sun'', Flagstaff, Arizona.

*Prescott National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Bradshaw Ranger District, Chino Valley Ranger District and Verde Ranger District are published in:—''Prescott Courier'', Presscott, Arizona.

*Tonto National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor are published in:—''East Valley Tribune'' and ''Scottsdale Tribune'', Mesa, Arizona.

Cave Creek Ranger District Notices are published in:—''Scottsdale Tribune'', in Mesa, Arizona.

Globe Ranger District Notices are published in:—''Arizona Silver Belt'', Globe, Arizona.

Mesa Ranger District Notices are published in:—''East Valley Tribune'', Mesa Arizona.

Payson Ranger District, Pleasant Valley Ranger District and Tonto Basin Ranger District Notices are published in:—''Payson Roundup'', Payson, Arizona.

**New Mexico National Forests**

*Carson National Forest*

Notices for Availability for comments, Decisions and Objections by Forest Supervisor, Camino Real Ranger District, Tres Piedras Ranger District and Questa Ranger District are

published in: —''The Taos News'', Taos, New Mexico.

Canjilon Ranger District and El Rito Ranger District Notices are published in: —''Rio Grande Sun'', Espanola, New Mexico.

Jicarilla Ranger District Notices are published in: —''Farmington Daily Times'', Farmington, New Mexico.

*Cibola National Forest and National Grasslands*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor affecting lands in New Mexico, except the National Grasslands are published in: —''Albuquerque Journal'', Albuquerque, New Mexico.

Forest Supervisor Notices affecting National Grasslands in New Mexico, Oklahoma and Texas are published by grassland and location as follows: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico published in: —''Union County Leader'', Clayton, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma published in: —''Boise City News'', Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas published in: —''The Dalhart Texan'', Dalhart, Texas. Black Kettle National Grassland, in Roger Mills County, Oklahoma published in: —''Cheyenne Star'', Cheyenne, Oklahoma. Black Kettle National Grassland, in Hemphill County, Texas published in: —''The Canadian Record'', Canadian Texas. McClellan Creek National Grassland published in: —''The Pampa News'', Pampa, Texas.

Mt. Taylor Ranger District Notices are published in: —''Cibola County Beacon'', Grants, New Mexico.

Magdalena Ranger District Notices are published in: —''Defensor-Chieftain'', Socorro, New Mexico.

Mountainair Ranger District Notices are published in: —''Mountainview Telegraph'', Tijeras, New Mexico.

Sandia Ranger District Notices are published in: —''Albuquerque Journal'', Albuquerque, New Mexico.

Kiowa National Grassland Notices are published in: —''Union County Leader'', Clayton, New Mexico.

Rita Blanca National Grassland Notices in Cimarron County, Oklahoma are published in: —''Boise City News'', Boise City, Oklahoma while Rita Blanca National Grassland Notices in Dallam County, Texas are published in: —''Dalhart Texan'', Dalhart, Texas.

Black Kettle National Grassland Notices in Roger Mills County, Oklahoma are published in: —''Cheyenne Star'', Cheyenne, Oklahoma, while Black Kettle National Grassland Notices in Hemphill County, Texas are published in: —''The Canadian Record'', Canadian, Texas.

McClellan Creek National Grassland Notices are published in: —''The Pampa News'', Pampa, Texas.

*Gila National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Quemado Ranger District, Reserve Ranger District, Glenwood Ranger District, Silver City Ranger District and Wilderness Ranger District are published in: —''Silver City Daily Press'', Silver City, New Mexico.

Black Range Ranger District Notices are published in: —''The Herald'', Truth or Consequences, New Mexico.

*Lincoln National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and the Sacramento Ranger District are published in: —''Alamogordo Daily News'', Alamogordo, New Mexico.

Guadalupe Ranger District Notices are published in: —''Carlsbad Current Argus'', Carlsbad, New Mexico.

Smokey Bear Ranger District Notices are published in: —''Ruidoso News'', Ruidoso, New Mexico.

*Santa Fe National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Coyote Ranger District, Cuba Ranger District, Espanola Ranger District, Jemez Ranger District and Pecos-Las Vegas Ranger District are published in: —''Albuquerque Journal'', Albuquerque, New Mexico.

Dated: March 22, 2007.

**Abel Camarena,**

*Deputy Regional Forester, Southwestern Region.*

[FR Doc. 07–1703 Filed 4–5–07; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Willamette Province Advisory Committee

**AGENCY:** Forest Service, USDA

**ACTION:** Notice of meeting.

**SUMMARY:** The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertainent to the implementation of the Northwest Forest Plan and to provide advice to federal land managers in the Province. The topics to be covered at the meeting include status of BLM Resource Management Plan revisions.

**DATES:** The meeting will be held April 20, 2007 beginning at 9 a.m. PDST.

**ADDRESSES:** The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Judith McHugh Willamette Province Advisory Committee, c/o Willamette National Forest, 211 E. 7th Avenue, Eugene, Oregon 97401, (541) 225–6305 or electronically to *jmchugh@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Judith McHugh, Willamette National Forest, (541) 225–6305.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: April 2, 2007.

**Scott G. Fitzwilliams,**

*Forest Supervisor, Willamette National Forest.*

[FR Doc. 07–1710 Filed 4–5–07; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Addition and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Addition to and Deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

*Comments Must be Received on or Before:* May 6, 2007.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703)

603–0655, or e-mail *CMTEFedReg@jwod.gov*.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each product will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

*End of Certification*

The following product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Products**

Trunk Locker, Barracks.
*NSN:* 8460–00–243–3234—Trunk Locker, Barracks.
*NPA:* BSW, Inc., Butte, MT.
*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA.
*Coverage:* C-List—Additional 25% of the government requirement for Defense Supply Center Philadelphia, Philadelphia, PA.

**Deletions**

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

*End of Certification*

The following product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Products**

Trunk Locker, Barracks.
*NSN:* 8460–00–243–3234—Trunk Locker, Barracks.
*NPA:* BSW, Inc., Butte, MT.
*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA.
*Coverage:* C-List—Additional 25% of the government requirement for Defense Supply Center Philadelphia, Philadelphia, PA.

**Deletions**

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

*End of Certification*

The following services are proposed for deletion from the Procurement List:

**Services**

*Service Type/Location:* Janitorial/Custodial, Agricultural Research Service, Southern Plains Range Research Station, 2000 18th Street, Woodward, OK.
*NPA:* Oklahoma's Action Rehabilitation Centers, Inc., Woodward, OK.
*Contracting Activity:* U.S. Department of Agriculture, ARS, OK.

*Service Type/Location:* Janitorial/Custodial, U.S. Immigration & Naturalization Service, Institutional Hearing Program, 7405CI Highway 75 South, Huntsville, TX.
*NPA:* Tri-County Mental Health and Mental Retardation Services, Conroe, TX.
*Contracting Activity:* U.S. Immigration and Naturalization Service, Houston, TX.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E7–6470 Filed 4–5–07; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

### Scope Clarification Request—Foreign–Trade Subzone 57B, (Construction Equipment), Volvo Construction Equipment North America, Inc.—Skyland, North Carolina

A request for clarification of scope has been submitted to the Foreign–Trade Zones Board (the Board) by Volvo Construction Equipment North America, Inc. (Volvo CENA), operator of Foreign–Trade Subzone 57B. A grant of authority for Volvo CENA's subzone was issued on May 15, 2001 (Board Order 1164), for the manufacture of construction equipment, specifically, wheel loaders and articulated haulers (66 FR 28890, 5/25/01). The scope of manufacturing authority was expanded on August 21, 2003 (Board Order 1284), to include skid–steer loaders and compaction rollers (68 FR 52383, 9/3/03).

Volvo CENA now seeks clarification as to whether its scope includes authority to fabricate and assemble construction equipment cabs (HTS 8431.49 and HTS 8708.29), rather than import the finished cabs from the parent company (Volvo CE) in Sweden. Volvo CENA's request indicates that the foreign–sourced materials under the proposed expanded scope fall into categories similar to those already included in the company's existing scope of authority. Duty rates on the imported components to be used for cab production range from duty–free to 9.9 percent.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is May 7, 2007. A copy of the request is available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, U. S. Department of Commerce, Room 2814B,

1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Christopher Kemp at christopher__kemp@ita.doc.gov or (202) 482–0862.

Dated: March 28, 2007.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E7–6507 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–802, A–570–893]**

### Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China

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

**SUMMARY:** The Department of Commerce (''the Department'') received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') and the People's Republic of China (''PRC''). The anniversary month of these orders is February. In accordance with the Department's regulations, we are initiating these administrative reviews.

**EFFECTIVE DATE:** April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva (Vietnam) or Christopher Riker (PRC), 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) 482–3208 or (202) 482–3441, respectively.

### Background

On February 2, 2007, the Department published in the **Federal Register** its Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 72 FR 5007 (''Notice of Opportunity''). In the Notice of Opportunity, the Department stated ''for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).'' See Notice of Opportunity at 72 FR 5008.

### PRC

The Department received timely requests from the Ad Hoc Shrimp Trade Action Committee (''Petitioners''), the Louisiana Shrimp Association (''LSA''), Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd. (''Evergreen''), Asian Seafoods (Zhanjiang) Co., Ltd. (''Asian Seafoods''), Hai Li Aquatic Co., Ltd. Zhao An, Fujian (''Hai Li''),[1] and the Allied Pacific Group,[2] in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty orders on shrimp from the PRC. Petitioners requested an administrative review for 401 companies, while LSA requested an administrative review for 162 companies. Subsequently, Petitioners withdrew their request for review for the PRC for all but eight companies. See Petitioners' letters dated March 1, 2007, March 16, 2007, and March 27, 2007.

With respect to the LSA's requests for administrative review the Department notes that, for the following 58 companies, the addresses provided for those entities were identical to those provided to the Department in the previous administrative review and were found to be undeliverable: Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., Allied Pacific Food, Chengai Nichi Lan Foods Co., Ltd., Dhin Foong Trdg, Dongri Aquatic Products Freezing Plants Shengping, Evergreen Aquatic Product Science and Technology, Formosa Plastics, Fuqing Xuhu Aquatic Food Trdg, Fuchang Trdg, Fuqing Chaohui Aquatic Food Trdg, Fuqing City Dongyi Trdg, Fuqing Dongwei Aquatic Products Industry Co., Ltd., Fuqing Dongyi Trdg, Fuqing Fuchang Trdg, Fuqing Longwei Aquatic Foodstuff, Gallant Ocean (Liangjiang) Co., Ltd., Gaomi Shenyuan Foodstuff, Guangxi Lian Chi Home Appliance Co, Hainan Jiadexin Aquatic Products Co., Ltd., IT Logistics, Juxian Zhonglu Foodstuffs, Logistics Harbour Dock, Longwei Aquatic Foodstuff, Master International Logistics, Meizhou Aquatic Products, Nichi Lan Food Co., Ltd. Chen Hai, P&T International Trading, Perfection Logistics Service, Phoenix Seafood, Putuo Fahua Aquatic Products Co., Ltd., Qingdao Dayang Jian Foodstuffs, Qinhuangdao Jiangxin Aquatic Food, Round The Ocean Logistics, Second Aquatic Food, Second Aquatic Foodstuffs Fty, Shandong Chengshun Farm Produce Trd, Shandong Sanfod Group, Shanghai Taoen International Trading Co., Ltd., Shantou Junyuan Pingyuan Foreign Trading, Shantou Sez Xuhoa Fastness Freeze Aquatic Factory Co, South Bay Intl, Taizhou Lingyang Aquatic Products Co., Ltd., Tianhe Hardware & Rigging, Xiamen Sungiven Imports & Exports, Yantai Guangyuan Foods Co, Yantai Xuehai Foodstuffs, Yelin Frozen Seafood Co., Zhangjiang Newpro Food Co., Ltd., Zhanjiang CNF Sea Products Engineering Ltd., Zhanjiang Fuchang Aquatic Products, Zhanjiang Jebshin Seafood Limited, Zhanjiang Shunda Aquatic Products, Zhejiang Taizhou Lingyang Aquatic Products Co., Zhejiang Zhongda, Zhoushan Guangzhou Aquatic Products Co., Ltd., Zhoushan International Trade Co., Ltd., Zhoushan Provisions & Oil Food Export and Import Co., Ltd., and Zhoushan Xi'an Aquatic Products Co., Ltd. See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent to Rescind 2004/2006 New Shipper Review, 72 FR 10645, 10647–8 (March 9, 2007) (''PRC Shrimp 2004–2006 Preliminary Results'') and Memorandum to the File, from Anya Naschak, regarding: *Placement of Undeliverable Addresses Information from the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China on the Record of the 2006–2007 Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China*, dated April 2, 2007 (''PRC Undeliverable Addresses Memo'') at Attachments I and II.

The LSA requested that the Department reconsider its decision, as defined in the Notice of Opportunity, to not accept a review request for a company absent new address information. See LSA's PRC Review Requests at 4–5. However, although the LSA states that it attempted to find additional address information, the LSA

[1] In its review request, Hai Li noted that it is also known as Haili Aquatic Co., Ltd. Zhaoan, Fujian.

[2] The Allied Pacific Group consists of Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., Zhanjiang Allied Pacific Aquaculture Co., Ltd., Allied Pacific (H.K.) Co., Ltd., and King Royal Investments Ltd.

has provided no additional address information for any of these companies, beyond what was previously provided in the 2004–2006 administrative review of shrimp from the PRC. See PRC Undeliverable Addresses Memos at Attachment I. Therefore, although the LSA requested that the Department reconsider its decision, we continue to find that it is inappropriate to initiate an administrative review of companies which we know that we cannot locate. Based on previous unsuccessful efforts by the Department to locate these companies, further efforts would be futile, absent new information as to their location. Accordingly, the Department is not initiating on the above-referenced 58 companies from the PRC.

In addition, the LSA has requested that the Department conduct an administrative review from the PRC of Zhanjiang Guolian Aquatic Products Co., Ltd. (''Guolian''). However, Guolian is excluded from the antidumping duty order on shrimp from the PRC. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 FR 5149 (February 1, 2005) (''PRC Shrimp Order''). Thus, the Department is also not initiating an administrative review for Guolian.

Therefore, the Department is hereby initiating the second administrative review of the antidumping duty order on shrimp from the PRC for the remaining 105 companies for which the Department has received a sufficient request for review.

**Vietnam**

The Department received timely requests from Petitioners, the LSA, and certain individual companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty orders on shrimp from Vietnam. Petitioners requested an administrative review for 92 companies, while the LSA requested an administrative review for 84 companies from Vietnam.

On February 28, 2007, Grobest & I–Mei Industrial (Vietnam) Co. Ltd. (''Grobest''), Vietnam Fish–One Co., Ltd (''Vietnam Fish–One''), and 20 other individual exporters,[3] self-requested an administrative review of their sales during the POR. On March 30, 2007, Petitioners withdrew their review request of 58 companies.

Therefore, the Department is hereby initiating administrative reviews of the antidumping duty order on shrimp from Vietnam for the 100 companies for which the Department has received a sufficient request for review.

**Initiation of Reviews**

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (''the Act''), we are initiating administrative reviews of the antidumping duty orders on shrimp from Vietnam and the PRC. We intend to issue the final results of these reviews on approximately February 28, 2008.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceeding** | |
| Vietnam: [4,5]. | |
| Vietnam: [4,5] | 02/01/06–01/31/07 |
| AAAS Logistics. | |
| Agrimex. | |
| Amanda Foods (Vietnam) Ltd. | |
| American Container Line. | |
| An Giang Fisheries Import and Export Joint Stock Company (Agifish). | |
| Angiang Agricultural Technology Service Company. | |
| Aquatic Products Trading Company. | |
| Bac Lieu Fisheries Company Limited. | |
| Bentre Frozen Aquaproduct Exports. | |
| Bentre Aquaproduct Imports & Exports. | |
| C.P. Vietnam Livestock Co. Ltd. | |
| Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO'')*. | |
| Cadovimex Seafood Import-Export and Processing Joint Stock Company (''CADOVIMEX'')*. | |
| Cai Doi Vam Seafood Import-Export Company (Cadovimex). | |
| Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.'')*. | |
| Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex). | |
| Cam Ranh Seafoods Processing Enterprise Company (''Camranh Seafoods''). | |
| Camau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 (''CAMIMEX'')*. | |
| Can Tho Agricultural and Animal Product Import Export Company (''CATACO'')*. | |
| Can Tho Agricultural Products. | |
| Can Tho Seafood Exports. | |
| Cautre Enterprises. | |
| Coastal Fishery Development. | |
| Coastal Fisheries Development Corporation (Cofidec). | |
| Coastal Fisheries Development Corporation (Cofidec). | |
| C P Vietnam Livestock Co. Ltd. | |
| C P Livestock. | |
| Cuulong Seaproducts Company (''Cuu Long Seapro'')*. | |
| Cuu Long Seaproducts Limited (''Cuulong Seapro''). | |
| Danang Seaproducts Import Export Corporation and its wholly owned affiliated Tho Quang Seafood Processing and Export Company (''Seaprodex Danang'')*. | |
| Dong Phuc Huynh. | |
| Duyen Hai Bac Lieu Company (''T.K. Co.''). | |
| Frozen Seafoods Fty. | |
| Frozen Seafoods Factory No. 32. | |

[3] Those Vietnamese companies listed below with an (*) are the additional 20 exporters self-requesting an administrative review.

| | Period to be reviewed |
|---|---|
| General Imports & Exports. | |
| Grobest & I-Mei Industrial (Vietnam) Co. Ltd. | |
| Grobest & I-Mei Industry Vietnam. | |
| Hacota. | |
| Hai Thuan Export Seaproduct Processing Co., Ltd. | |
| Hai Viet. | |
| Hanoi Seaproducts Import Export Corporation (“Seaprodex Hanoi”). | |
| Hatrang Frozen Seaproduct Fty. | |
| Hoa Nam Marine Agricultural. | |
| Investment Commerce Fisheries Corporation (“Incomfish”). | |
| Khanh Loi Trading. | |
| Kien Gang Seaproduct Import and Export Company (“Kisimex”). | |
| Kien Gang Sea Products Import and Export Company (“Kisimex”). | |
| Kim Anh Co., Ltd. | |
| Lamson Import-Export Foodstuffs Corporation. | |
| Minh Hai Export Frozen Seafood Processing Joint Stock Company. | |
| Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”)*. | |
| Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”)*. | |
| Minh Hai Sea Products Import Export Company (Seaprimex Co). | |
| Minh Phat Seafood Co., Ltd. | |
| Minh Phat Seafood. | |
| Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.)*. | |
| Minh Phu Seafood Corp.. | |
| Minh Phu Seafood Corporation. | |
| Minh Qui Seafood. | |
| Minh Qui Seafood Co., Ltd. | |
| Ngoc Sinh Private Enterprise*. | |
| Ngoc Sinh Seafoods. | |
| Nha Trang Company Limited. | |
| Nha Trang Fisheries Co. Ltd. | |
| Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”). | |
| Nha Trang Seaproduct Company (“Nha Trang Seafoods”)*. | |
| Pataya Food Industry (Vietnam) Ltd. | |
| Phu Cuong Seafood Processing and Import-Export Co., Ltd.*. | |
| Phuong Nam Co. Ltd.*. | |
| Phuong Nam Seafood Co. Ltd. | |
| Saigon Orchide. | |
| Sao Ta Foods Joint Stock Company (“Fimex VN”)*. | |
| Sea Product. | |
| Sea Products Imports & Exports. | |
| Seafood Processing Imports-Exports. | |
| Seaprodex. | |
| Soc Trang Aquatic Products and General Import Export Company (“Stampimex”)*. | |
| Sonacos. | |
| Song Huong ASC Import-Export Company Ltd. | |
| Song Huong ASC Joint Stock Company. | |
| Special Aquatic Products Joint Stock Company (“Seaspimex”). | |
| Tacvan Frozen Seafoods Processing Export Company. | |
| Thami Shipping & Airfreight. | |
| Thanh Long. | |
| Thien Ma Seafood. | |
| Tho Quang Seafood Processing & Export Company. | |
| Thuan Phuoc Seafoods and Trading Corporation and its separate factories Frozen Seafood Factory No. 32 and Seafoods and Foodstuff Factory (Thuan Phuoc)*. | |
| Tourism Material and Equipment Company (Matourimex Hochiminh City Branch). | |
| Truc An Company. | |
| UTXI Aquatic Products Processing Company*. | |
| Viet Foods Co., Ltd. (“Viet Foods”)*. | |
| Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”). | |
| Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”). | |
| Viet Nhan Company. | |
| Vietnam Fish-One Co., Ltd. (Vietnam Fish-One). | |
| Vietnam Northern Viking Technologie Co., Ltd. | |
| Vietnam Northern Viking Technology Co., Ltd. | |
| Vilfood Co. | |
| Vinh Loi Import Export Company (“Vimexco”)*. | |
| Vita. | |
| V N Seafoods. | |
| PRC:[6] | 02/01/06–01/31/07 |
| Allied Pacific (H.K.) Co. Ltd. | |
| Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd. | |
| Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Allied Pacific Food (Dalian) Co. Ltd. | |
| Ammon International. | |
| Asian Seafoods (Zhanjiang) Co., Ltd. | |
| Aquatic Foodstuffs FTY. | |
| Baofa Aquatic Products Co., Ltd. | |
| Beihai Zhengwu Industry Co., Ltd. | |
| Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng). | |
| CITIC Heavy Machinery. | |
| Dafu Foods Industry. | |
| Dalian FTZ Sea-Rich International Trading Co., Ltd. | |
| Dalian Shan Li Food. | |
| Dalian Shanhai Seafood. | |
| Dongri Aquatic Products Freezing Plants. | |
| Dongshan Xinhefa Food. | |
| Fuchang Aquatic Products. | |
| Fuqing Chaohui Aquatic Food Co., Ltd. | |
| Fuqing Yihua Aquatic Products Co., Ltd. | |
| Gallant Ocean International. | |
| Gallant Seafoods. | |
| Go Harvest Aquatic Products. | |
| Guangzhou Lingshan Aquatic Products. | |
| Guolian Aquatic Products. | |
| Hai Li Aquatic Co., Ltd. Zhao An, Fujian/Haili Aquatic Co., Ltd. Zhaoan Fujian. | |
| Hainan Fruit Vegetable Food Allocation Co., Ltd. | |
| Hainan Golden Spring Foods Co., Ltd/ Hainan Brich Aquatic Products Co., Ltd. | |
| Hainan Jiadexin Foodstuff. | |
| Jinfu Trading Co., Ltd. | |
| Jinhang Aquatic Industry. | |
| Kaifeng Ocean Sky Industry. | |
| King Royal Investments, Ltd. | |
| Laiyang Hengrun Foodstuff. | |
| Laiyang Luhua Foodstuffs. | |
| Leizhou Zhulian Frozen Food Co., Ltd. | |
| Longsheng Aquatic Product. | |
| Luk Ka Paper Industry. | |
| Marnex. | |
| Meizhou Aquatic. | |
| Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. | |
| North Supreme Seafood (Zhejiang) Co., Ltd. | |
| Ocean Freezing Industry & Trade General. | |
| Pingyang Xinye Aquatic Products Co., Ltd. | |
| Polypro Plastics. | |
| Power Dekor Group Co., Ltd. | |
| Red Garden Food. | |
| Red Garden Foodstuff. | |
| Rongcheng Tongda Aquatic Food. | |
| Ruian Huasheng Aquatic Products. | |
| Savvy Seafood Inc.. | |
| Sealord North America. | |
| Seatrade International. | |
| Shanghai Linghai Fisheries Economic and Trading Co.. | |
| Shantou City Qiaofeng Group. | |
| Shantou Freezing Aquatic Product Food Stuffs Co.. | |
| Shantou Jinhang Aquatic Industry Co., Ltd. | |
| Shantou Jinyuan District Mingfeng Quick-Frozen Factory. | |
| Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.). | |
| Shantou Longsheng Aquatic Product. | |
| Shantou Ocean Freezing Industry and Trade General Corporation. | |
| Shantou Red Garden Foodstuff. | |
| Shantou Red Garden Food Processing Co. | |
| Shantou Ruiyuan Industry Co., Ltd. | |
| Shantou Shengping Oceanstar Business Co., Ltd. | |
| Shantou Wanya Food Factory Co., Ltd. | |
| Shantou Yuexing Enterprise Company. | |
| Silvertie Holding. | |
| Spectrum Plastics. | |
| Taizhou Zhonghuan Industrial Co., Ltd. | |
| The Second Aquatic Food. | |
| Weifang Taihua Food. | |
| Weifang Yongqiang Food Ind. | |
| Wenling Xingdi Aquatic Products. | |
| Xuwen Hailang Breeding Co., Ltd. | |
| Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Yantai Wei-Cheng Food Co., Ltd. | |
| Yantai Xinlai Trade. | |
| Yelin Enterprise Co., Ltd. Hong Kong. | |
| Zhangjiang Bobogo Ocean Co., Ltd. | |
| Zhanjiang Allied Pacific Aquaculture Co., Ltd. | |
| Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd. | |
| Zhanjiang Go-Harvest Aquatic Products Co., Ltd. | |
| Zhanjiang Regal Integrated Marine Resources Co. Ltd. | |
| Zhanjiang Runhai Foods Co., Ltd. | |
| Zhanjiang Universal Seafood Corp. | |
| Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd. | |
| Zhejiang Daishan Baofa Aquatic Products Co., Ltd. | |
| Zhejiang Evernew Seafood Co., Ltd. | |
| Zhejiang Xingyang Import & Export. | |
| Zhejiang Xintianjiu Sea Products Co., Ltd. | |
| Zhejiang Zhenlong Foodstuffs Co., Ltd. | |
| Zhenjaing Evergreen Aquatic Products Science & Technology Co., Ltd. | |
| Zhoushan Cereals, Oils, and Foodstuffs Import and Export Co., Ltd. | |
| Zhoushan Diciyuan Aquatic Products. | |
| Zhoushan Guotai Aquatic Products Co., Ltd. | |
| Zhoushan Haichang Food Co. | |
| Zhoushan Huading Seafood Co., Ltd. | |
| Zhoushan Industrial Co., Ltd. | |
| Zhoushan Jingzhou Aquatic Products Co., Ltd. | |
| Zhoushan Lizhou Fishery Co., Ltd. | |
| Zhoushan Putuo Huafa Sea Products Co., Ltd. | |
| Zhoushan Xifeng Aquatic Co., Ltd. | |
| Zhoushan Zhenyang Developing Co., Ltd. | |
| ZJ CNF Sea Product Engineering Ltd. Viet Nhan Company. | |

[4] If one of the below-named companies does not qualify for a separate rate, all other exporters of shrimp from Vietnam that have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam entity of which the named exporter is a part.

[5] Some companies appear to be listed twice, but there are two addresses provided in the administrative review requests for similar named companies and therefore, we are listing them separately.

[6] If one of the below-named companies does not qualify for a separate rate, all other exporters of shrimp from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

**Selection of Respondents**

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either (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 of subject merchandise from the exporting country that can be reasonably examined.

Due to the large number of firms requested for these administrative reviews and the resulting administrative burden to review each company for which a request has been made, the Department is exercising its authority to limit the number of respondents selected for review. See Section 777A(c) of the Act.

The Department intends to examine the largest exporters and producers by volume. Therefore, the Department has determined to send quantity and value (''Q&V'') questionnaires to the companies (or groups of companies where applicable) named above for the PRC and Vietnam to determine the largest exporters. See ''Q&V QUESTIONNAIRE'' section below for the procedures in this regard.

**Separate Rates**

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department's analysis mirrors that established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (''Sparklers''), as amplified by the Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (''Silicon Carbide''). In accordance with the separate rate criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both de jure and de facto government control over export activities.

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, (April 5, 2005), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05-1.pdf*. The process now requires the submission of a separate rate status application.

Due to the large number of companies subject to administrative reviews in both the Vietnam and the PRC proceedings, the Department is requiring all companies listed above that wish to qualify for separate rate

status in these administrative reviews to complete, as appropriate, either a separate rate status application or certification, as described below.

Because the Department intends to select the mandatory respondents by selecting the exporters/producers accounting for the largest volume of subject merchandise exported to the United States during the period of review, the Department will require all potential respondents to demonstrate their eligibility for a separate rate. For those respondents not representing the largest volume of subject merchandise exported to the United States, the Department will make separate rate determinations for each company. Only those respondents with separate rate status will be included in the group receiving the weighted-average margin calculated from the selected respondents. However, for any respondent that is determined later in this segment to have provided inaccurate information regarding its separate rate status, the Department may apply facts otherwise available with an adverse inference if it determines that such respondent failed to cooperate by not acting to the best of its ability.

For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires companies for which a review was requested and who currently have separate rates status to certify that they continue to meet the criteria for obtaining a separate rate. The certification form will be available on the Department's Web site at *http://www.trade.gov/ia/* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Certifications for both Vietnam and the PRC are due to the Department by close of business on April 23, 2007. The deadline and requirement for submitting a certification applies equally to NME-owned companies, wholly foreign-owned companies, and foreign resellers who purchase the subject merchandise and export it to the United States.

The Department requires, to demonstrate eligibility for a separate rate, a separate rates status application for companies that do not currently have separate rates status. The separate rate status application will be available on the Department's Web site at *http://www.trade.gov/ia/* on the date of publication of this **Federal Register** notice. In responding to the separate rate status application, please refer to instructions contained within the application. Separate rate status applications are due to the Department by close of business on June 1, 2007. The deadline and requirement for submitting a separate rate status application applies equally to NME-owned companies, wholly-foreign owned companies, and foreign resellers that purchase the subject merchandise and export it to the United States. Further, due to the time constraints imposed by our statutory deadlines, the Department may be unable to grant any extensions for the submission of separate rate certifications or separate rate status applications.

**Q&V Questionnaire**

As discussed above, in advance of issuing the antidumping questionnaire, we will also be requiring all parties for whom a review is requested to respond to a Q&V questionnaire, which requests information on the respective quantity and U.S. dollar sales value of all exports of shrimp to the United States during the period February 1, 2006 through January 31, 2007. The Department will send the Q&V questionnaire to the companies (or groups of companies where applicable) named above. In addition, the Q&V questionnaire will be available on the Department's Web site at *http://www.trade.gov/ia/*. The responses to the Q&V questionnaire are due to the Department by close of business on April 23, 2007. Due to the time constraints imposed by our statutory and regulatory deadlines, the Department may be unable to grant any extensions for the submission of the Q&V questionnaire responses. In responding to the Q&V questionnaire, please refer to the instructions contained in the Q&V questionnaire.

All firms requested for review and seeking separate rate status in these administrative reviews must submit a separate rate status application or certification (as appropriate) as described above, and a complete response to the Q&V questionnaire, within the time limits established, and discussed above in this notice of initiation, in order to receive consideration for separate rate status. For parties that fail to timely respond to the requisite separate rate status application/certification, or to the Q&V questionnaire, the Department may resort to the use of facts otherwise available, and may employ an adverse inference. All information submitted by respondents in this administrative review is subject to verification. As discussed above, due to the large number of parties in these proceedings, and the Department's need to complete its proceedings within the statutory deadlines, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the separate rate certification, and the separate rate status application will be available on the Department's Web site at *http://www.trade.gov/ia/*, in addition, the Q&V questionnaire will be mailed to the parties named above and is also available on the Department's Web site at *http://www.trade.gov/ia/*.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/*.

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: April 2, 2007.

**James C. Doyle,**

*Office Director, AD/CVD Operations, Office 9.*

[FR Doc. E7–6502 Filed 4–5–07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–838, A–331–802, A–533–840, A–549–822]**

### Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From Brazil, Ecuador, India and Thailand

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

**SUMMARY:** The Department of Commerce (''Department'') received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp (''shrimp'') from Brazil, Ecuador, India and Thailand. The anniversary month of these orders is February. In accordance with 19 CFR 351.222 of the Department's regulations, we are initiating these administrative reviews.

**EFFECTIVE DATE:** April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson at (202) 482–4929 (Brazil), David Goldberger at (202) 482–4136 (Ecuador), Elizabeth Eastwood at (202) 482–3874 (India), and Irina Itkin at (202) 482–0656 (Thailand), AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

## Background

The Department received timely requests from petitioner,[1], the Louisiana Shrimp Association (''LSA''), and certain individual companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February 2007, for administrative reviews of the antidumping duty orders on shrimp from Brazil, Ecuador, India, and Thailand covering 40 companies for Brazil, 64 companies for Ecuador, 313 companies for India, and 142 companies for Thailand. The Department is now initiating administrative reviews of the orders covering these companies.

In accordance with the Department's recent statement in its notice of opportunity to request administrative reviews (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 72 FR 5007 (February 2, 2007)), we have not initiated administrative reviews with respect to those companies which the Department was unable to locate in prior segments and for which no new information as to the party's location was provided by the requestor. See ''Incomplete Requests for Review'' section of this notice for country-specific lists of the companies for which we did not initiate an administrative review.

## Initiation of Reviews

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (''the Act''), we are initiating administrative reviews of the antidumping duty orders on shrimp from Brazil, Ecuador, India and Thailand. We intend to issue the final results of these reviews on approximately February 28, 2008.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceeding** | |
| Brazil: Certain Frozen Warmwater Shrimp, A–351–838 | 2/1/06–1/31/07 |
| Acarau Pesca Distr. de Pescado Imp. e Exp. Ltda. | |
| Amazonas Industria Alimenticias SA. | |
| Aquacultura Fortaleza Aquafort SA. | |
| Aquafeed do Brasil Ltda—Note 1. | |
| Aquática Maricultura do Brasil Ltda—Note 1. | |
| Artico S/A.. | |
| Bramex Brasil Mercantil Ltda. | |
| Camanor—Produtos Marinhos Ltda. | |
| Cida Central de Ind. E Distribuicao de Alimentos Ltda.—Note 2. | |
| Cina Cia Nordeste de Aquicultura Alimentacao. | |
| Compescal—Comércio de Pescado Aracatiense Ltda.—Note 3. | |
| Compex Industria E Comercio de Pesca E Exportacao Ltd. | |
| Empresa de Armazenagem Frigorifica Ltda.—Note 4. | |
| Guy Vautrin Importacao & Exportaco. | |
| Intermarin Servicios Nauticos. | |
| Ipesca. | |
| ITA Fish—S.W.F. Importacao e Exportacao Ltda. | |
| J K Pesca Ltda. | |
| Leardini Pescados Ltda. | |
| Lusomar Maricultura Ltda. | |
| Maricultura Netuno SA—Note 4. | |
| Maricultura Rio Grandense. | |
| Maricultura Tropical. | |
| Marine Maricultura do Nordeste SA—Note 5. | |
| MM Monteiro Pesca E Exportacao Ltda. | |
| Mucuripe Pesca Ltda., Epp. | |
| Natal Pesca. | |
| Norte Pesca SA. | |
| Orion Pesca Ltda. | |
| Pesqueira Maguary Ltda.—Note 6. | |
| Potiguar Alimentos do Mar Ltda.—Note 7. | |
| Potipora Aquacultura Ltda. | |
| Produmar—Cia Exportadora de Produtos do Mar—Note 2. | |
| Qualimar Comercio Importaçao E Exportacao Ltda. | |
| Santa Lavinia Comercio e Exportacio Ltda. | |
| Secom Aquicultura Comercio E Industria SA. | |
| SM Pescados Indústria Comércio E Exportacão Ltda. | |
| Sohagro Marina do Nordeste SA. | |
| Tecmares Maricultura Ltda. | |
| Torquato Pontes Pescados SA. | |
| Valencia da Bahia Maricultura SA. | |
| Ecuador: Certain Frozen Warmwater Shrimp, A–331–802 | 2/1/06–1/31/07 |
| Agricola e Ind Ecuaplantatio. | |
| Agrol. | |
| Alberto Xavier Mosquera Rosado. | |
| Alquimia Marina S.A. | |
| Babychic S.A. | |
| Camarones. | |
| Comar Co Ltda. | |
| Doblertel S.A. | |

[1] Ad Hoc Shrimp Trade Action Committee (''Petitioner'').

| | Period to be reviewed |
|---|---|
| Dunci S.A. | |
| El Rosario Ersa S.A. | |
| Empacadora Bilbo Bilbosa. | |
| Empacadora del Pacifico S.A., Edpacif S.A. | |
| Empacadora Dufer Cia. Ltda. | |
| Empacadora Gran Mar S.A. (Empagran). | |
| Empacadora Nacional. | |
| Empacadora y Exportadora Calvi Cia. Ltda. | |
| Emprede. | |
| Estar C.A. | |
| Exporklore, S.A. | |
| Exportadora Bananera Noboa. | |
| Exportadora del Oceano Oceanexa C. A. | |
| Exportadora del Oceano Pacifico OCEANPAC. | |
| Fortumar Ecuador S.A. | |
| Gambas del Pacifico. | |
| Gondi, S.A. | |
| Hectorosa. | |
| Industrial Pesquera Santa Priscila S.A. | |
| Inepexa S.A. | |
| Jorge Luis Benitez Lopez. | |
| Karpicorp S.A. | |
| Luis Loaiza Alvarez. | |
| Mardex Cia. Ltda. | |
| Marines CA. | |
| Marisco (El Marisco). | |
| Mariscos de Chupadores Chupamar. | |
| Mariscos del Ecuador c.l. Marecuador. | |
| NaturalSelect S.A. | |
| Negocios Industriales Real Nirsa SA. | |
| Novapesca S.A. | |
| OceanInvest S.A. | |
| Oceanmundo S.A. | |
| Oceanpro. | |
| Operadora y Procesadora de Productos Marinos S.A. (Omarsa). | |
| Oyerly S.A. | |
| P.C. Seafood S.A. | |
| Pacfish S.A. | |
| PCC Congelados & Frescos S.A. | |
| Pescazul. | |
| Peslasa SA. | |
| Phillips Seafoods. | |
| Procesadora del Rio Proriosa S.A. | |
| Productos Cultivados del Mar Proc. | |
| Promarisco, S.A. | |
| Promarosa Productos. | |
| Sociedad Atlantico Pacifico. | |
| Sociedad Nacional de Galapagos. | |
| Soitgar. | |
| Studmark, S.A. | |
| Tecnica & Comercio de la Pesca Teco. | |
| Tolyp S.A. | |
| Transcity, S.A. | |
| Transmarina C.A. | |
| Transocean Ecuador. | |
| Unilines Transport System. | |
| India: Certain Frozen Warmwater Shrimp, A–533–840 | 2/1/06–1/31/07 |
| Abad Fisheries. | |
| Accelerated Freeze-Drying Co. ######. | |
| A.S. Marine Industries Pvt. Ltd. | |
| Adani Exports Ltd. | |
| Aditya Udyog. | |
| Agri Marine Exports Ltd. | |
| Al Mustafa Exp & Imp. | |
| Alapatt Marine Exports. | |
| All Seas Marine P. Ltd. | |
| Allana Frozen Foods Pvt. Ltd. | |
| Allanasons Ltd. | |
| Alsa Marine & Harvests Ltd. | |
| Amalgam Foods & Beverages Limited. | |
| Ameena Enterprises. | |
| AMI Food Products. | |
| Amison Foods Ltd. | |

| | Period to be reviewed |
|---|---|
| Amison Seafoods Ltd. | |
| Amulya Sea Foods. | |
| Ananda Aqua Exports (P) Ltd. | |
| Ananda Foods. | |
| Andaman Seafoods Pvt. Ltd. | |
| Angelique Intl. | |
| Anjaneya Seafoods. | |
| Anjani Marine Traders. | |
| Apex Exports. | |
| Aqua Star Marine Foods. | |
| Arsha Seafood Exports Pvt. Ltd. | |
| ASF Seafoods. | |
| Asvini Exports. | |
| Asvini Fisheries Limited ######. | |
| Asvini Fisheries Private Limited. | |
| Aswin Associates. | |
| Ashwini Frozen Foods. | |
| Atta Export. | |
| Avanti Feeds Limited. | |
| Ayshwarya Seafood Private Limited. | |
| Baby Marine (Eastern) Exports. | |
| Baby Marine Exports. | |
| Baby Marine International. | |
| Baby Marine Products. | |
| Balaji Seafood Exports I Ltd. | |
| Baraka Overseas Traders. | |
| Bell Foods (Marine Division). | |
| Bharat Seafoods. | |
| Bhatsons Aquatic Products. | |
| Bhavani Seafoods. | |
| Bhisti Exports. | |
| Bijaya Marine Products. | |
| Bilal Fish Suppliers. | |
| Blue Water Foods & Exports. | |
| Bluepark Seafoods Pvt. Ltd. | |
| BMR Exports. | |
| Brilliant Exports. | |
| Britto Exports. | |
| C P Aquaculture (India) Ltd. | |
| Calcutta Seafoods. | |
| Capital Freezing Complex. | |
| Capithan Exporting Co. | |
| Castlerock Fisheries Ltd. | |
| Castlerock Seafoods Ltd. | |
| Cham Exports Ltd. | |
| Cham Ocean Treasures Co., Ltd. | |
| Cham Trading Organization. | |
| Chand International. | |
| Chemmeens (Regd.). | |
| Cherukattu Industries (Marine Div.). | |
| Choice Canning Company. | |
| Choice Trading Corporation Pvt. Ltd. | |
| Coastal Corporation Ltd ##. | |
| Coastal Trawlers Ltd ##. | |
| Cochin Frozen Food Exports Pvt. Ltd. | |
| Corlim Marine Exports Pvt. Ltd. | |
| Corline Exports. | |
| Danda Fisheries. | |
| Dariapur Aquatic Pvt. Ltd. | |
| Deepmala Marine Exports. | |
| Devi Fisheries Limited. | |
| Devi Marine Food Exports Private Limited#. | |
| Devi Seafoods Limited ######. | |
| Dhanamjaya Impex P. Ltd. | |
| Diamond Seafoods Exports. | |
| Digha Seafood Exports. | |
| Dorothy Foods. | |
| Edhayam Frozen Foods Pvt. Ltd. | |
| El-Te Marine Products. | |
| Esmario Export Enterprises. | |
| Excel Ice Services/Chirag Int'l. | |
| Falcon Marine Exports Limited. | |
| Firoz & Company. | |

| | Period to be reviewed |
|---|---|
| Five Star Marine Exports Private Limited ######. | |
| Forstar Frozen Foods Pvt. Ltd. | |
| Freeze Engineering Industries (Pvt. Ltd.). | |
| Frigerio Conserva Allana Limited. | |
| Frontline Exports Pvt. Ltd. | |
| G A Randerian Ltd. | |
| GKS Business Associates Pvt. Ltd. | |
| Gajula Exim P. Ltd. | |
| GausiaCold Storage P. Ltd. | |
| Gayatri Seafoods. | |
| Geo Aquatic Products (P) Ltd. | |
| Geo Seafoods. | |
| Global Sea Foods & Hotels Ltd. | |
| Goan Bounty. | |
| Gold Farm Foods (P) Ltd. | |
| Golden Star Cold Storage. | |
| Gopal Seafoods. | |
| Grandtrust Overseas (P) Ltd. | |
| Gtc Global Ltd. | |
| GVR Exports Pvt. Ltd. | |
| HA & R Enterprises. | |
| HIC AFB Special Foods Pvt. Ltd. | |
| Hanjar Ice and Cold Storage. | |
| Hanswati Exports P. Ltd. | |
| Haripriya Marine Food Exports. | |
| Haripriya Marine Export Pvt. Ltd. | |
| Hindustan Lever, Ltd. | |
| Hiravata Ice & Cold Storage. | |
| Hiravati Exports Pvt. Ltd. | |
| Hiravati International P. Ltd. | |
| HMG Industries Ltd. | |
| Honest Frozen Food Company. | |
| I Ahamed & Company. | |
| IFB Agro Industries Limited. | |
| India CMS Adani Exports. | |
| India Seafoods. | |
| Indian Aquatic Products. | |
| Indian Seafood Corporation. | |
| Innovative Foods Limited/Amalgam Foods Ltd ##### ######. | |
| Interfish. | |
| International Freezefish Exports. | |
| InterSeas Exports Corporation. | |
| Intersea. | |
| ITC Ltd. | |
| J R K Seafoods Pvt. Ltd. | |
| Jagadeesh Marine Exports. | |
| Jaya Satya Marine Exports. | |
| Jayalakshmi Sea Foods Pvt. Ltd ######. | |
| Jinny Marine Traders. | |
| K R M Marine Exports Ltd. | |
| K V Marine Exports #####. | |
| Kadalkanny Frozen Foods. | |
| Kader Exports Private Limited #. | |
| Kader Investment and Trading Company Private Limited #. | |
| Kalyanee Marine. | |
| Kaushalya Aqua Marine Product Exports Pvt. Ltd. | |
| Kay Kay Exports. | |
| Keshodwala Foods. | |
| Key Foods. | |
| King Fish Industries. | |
| Kings Marine Products. | |
| KNR Marine Exports. | |
| Koluthara Exports Ltd. | |
| Konark Aquatics & Exports Pvt. Ltd. | |
| Konkan Fisheries Pvt. Ltd. | |
| KRM Group. | |
| L.G. Seafoods. | |
| Lakshmi Marine Products. | |
| Lansea Foods Pvt. Ltd. | |
| Laxmi Narayan Exports. | |
| Lewis Natural Foods Ltd. | |
| Liberty Frozen Foods Private Limited #. | |
| Liberty Oil Mills#. | |

| | Period to be reviewed |
|---|---|
| Libran Cold Storages (P) Ltd. | |
| Lotus Sea Farms. | |
| M K Exports. | |
| M.R.H. Trading Company. | |
| Magnum Estate Private Limited. | |
| Magnum Export. | |
| Magnum Seafoods Private Limited. | |
| Malabar Marine Exports. | |
| Malnad Exports Pvt. Ltd. | |
| Mamta Cold Storage. | |
| Mangala Marine Exim Pvt. Ltd. | |
| Mangala Sea Products. | |
| Marina Marine Exports. | |
| Marine Food Packers. | |
| Meenaxi Fisheries Pvt. Ltd. | |
| Miki Exports International. | |
| MSC Marine Exporters #####. | |
| Mumbai Kamgar MGSM Ltd. | |
| N.C. Das & Company. | |
| Naga Hanuman Fish Packers. | |
| Naik Ice & Cold Storage. | |
| Naik Seafoods Ltd. | |
| Nas Fisheries Pvt Ltd. | |
| National Seafoods Company. | |
| National Steel. | |
| National Steel & Agro Ind. | |
| Navayuga Exports Ltd ######. | |
| Nekkanti Sea Foods Limited. | |
| New Royal Frozen Foods. | |
| Nezami Rekha Sea Food. | |
| NGR Aqua International. | |
| Nila Sea Foods Pvt. Ltd. | |
| Noble Aqua Pvt. Ltd. | |
| Nsil Exports. | |
| Omsons Marines Ltd. | |
| Padmaja Exports. | |
| Partytime Ice Pvt Ltd. | |
| Penver Products (P) Ltd. | |
| Philips Foods India Pvt Ltd. | |
| Pijikay International Exports P Ltd. | |
| Pisces Seafood International. | |
| Premier Exports International. | |
| Premier Marine Foods. | |
| Premier Marine Products#. | |
| Pronto Foods Pvt. Ltd. | |
| R F. Exports. | |
| R K Ice & Cold Storage. | |
| Raa Systems Pvt. Ltd. | |
| Rahul Foods (GOA). | |
| Rahul International. | |
| Raj International. | |
| Raju Exports. | |
| Ramalmgeswara Proteins & Foods Ltd. | |
| Rameshwar Cold Storage. | |
| Ram's Assorted Cold Storage Ltd. | |
| Raunaq Ice & Cold Storage. | |
| Ravi Frozen Foods Ltd. | |
| Raysons Aquatics Pvt. Ltd. | |
| RBT Exports. | |
| Regent Marine Industries. | |
| Relish Foods. | |
| Rohi Marine Private Ltd. | |
| Royal Cold Storage (India) Pvt. Ltd. | |
| Royal Link Exports. | |
| Rubian Exports. | |
| Ruby Marine Foods. | |
| Ruchi Worldwide. | |
| RVR Marine Products. | |
| RVR Marine Products Private Limited. | |
| S A Exports. | |
| S B Agro (India) Ltd###. | |
| S Chanchala Combines. | |
| S K Exports (P) Ltd. | |

| | Period to be reviewed |
|---|---|
| SLS Exports Pvt. Ltd. | |
| S S International. | |
| Saanthi Seafoods Ltd. | |
| Sabri Food Products. | |
| Sagar Foods. | |
| Sagar Grandhi Exports Pvt. Ltd. | |
| Sagar Samrat Seafoods. | |
| Sagarvihar Fisheries Pvt. Ltd####. | |
| Sai Marine Exports Pvt. Ltd. | |
| Salet Seafoods Pvt Ltd. | |
| Samrat Middle East Exports (P) Ltd. | |
| Sanchita Marine Products P Ltd. | |
| Sandhya Marines Limited. | |
| Sarveshwari Ice & Cold Storage P Ltd. | |
| Satya Seafoods Private Limited. | |
| Satyam Marine Exports. | |
| Sawant Food Products. | |
| Sea Rose Marines (P) Ltd. | |
| Seagold Overseas Pvt. Ltd. | |
| Sealand Fisheries Ltd. | |
| Seaperl Industries. | |
| Selvam Exports Private Limited. | |
| Sharat Industries Ltd. | |
| Sharon Exports. | |
| Sheimar Seafoods Ltd. | |
| Shimpo Exports. | |
| Shipper Exporter National Steel. | |
| Siddiq Seafoods. | |
| Silver Seafood. | |
| Sita Marine Exports. | |
| Skyfish. | |
| Sonia Fisheries. | |
| Sourab. | |
| Sprint Exports. | |
| Sprint Exports Pvt. Ltd. | |
| Sree Vaialakshrm Exports. | |
| Sreevas Export Enterprises. | |
| Sri Chandrakantha Marine Exports Ltd. | |
| Sri Sakthi Marine Products P Ltd. | |
| Sri Satya Marine Exports. | |
| Sri Sidhi Freezers & Exporters Pvt. Ltd. | |
| Sri Venkata Padmavathi Marine Foods Pvt. Ltd. | |
| SSF Ltd. | |
| Star Agro Marine Exports Private Limited. | |
| Star Fish Exports. | |
| Sterling Foods. | |
| Sun-Bio Technology Limited###. | |
| Supreme Exports. | |
| Surya Marine Exports. | |
| Suryamitra Exim Private Limited. | |
| Suvarna Rekha Exports Private Limited. | |
| Suvarna Rekha Marines P Ltd. | |
| Swarna Seafoods Ltd. | |
| TBR Exports Pvt Ltd. | |
| Teekay Maine P. Ltd. | |
| The Canning Industries (Cochin) Ltd. | |
| The Waterbase Ltd. | |
| Theva & Company. | |
| Tony Harris Seafoods Ltd. | |
| Tri Marine Foods Pvt. Ltd. | |
| Trinity Exports. | |
| Tri-Tee Seafood Company. | |
| Triveni Fisheries P Ltd. | |
| Ulka Seafoods (P) Ltd. | |
| Uniroyal Marine Exports Ltd. | |
| Universal Cold Storage Ltd. | |
| Universal Cold Storage Private Limited#. | |
| Upasana Exports. | |
| Usha Seafoods. | |
| V Marine Exports. | |
| Vaibhav Sea Foods. | |
| Varnita Cold Storage. | |
| Veejay IMPEX. | |

| | Period to be reviewed |
|---|---|
| Veraval Marines & Chemicals P Ltd. | |
| Victoria Marine & Agro Exports Ltd. | |
| Vijayalaxmi Seafoods. | |
| Vinner Marine. | |
| Wellcome Fisheries Limited. | |
| Winner Seafoods. | |
| Wisdom Marine Exports. | |
| Z A. Food Products. | |
| Thailand: Certain Frozen Warmwater Shrimp, A–549–822 | 2/1/06–1/31/07 |
| ACU Transport. | |
| Andaman Seafood Co., Ltd. *. | |
| Ampai Frozen Food Co., Ltd. | |
| Anglo-Siam Seafoods Co., Ltd. | |
| Applied DB Ind. | |
| AS Intermarine Foods Co., Ltd. | |
| Asia Pacific (Thailand) Co., Ltd. *****. | |
| Asian Seafoods Cold Storage Public Co., Ltd. | |
| Asian Seafoods Coldstorage (Suratthani) Company Limited. | |
| A. Watanachai Frozen Products Co., Ltd. | |
| Bangkok Dehydrated Marine Product Co., Ltd. | |
| Bright Sea Co., Ltd **. | |
| C P Mdse. | |
| C.Y. Frozen Food Co., Ltd. | |
| Capital Food Trade Limited. | |
| Chaiwarut Company Limited. | |
| Chaivaree Marine Products Co., Ltd. | |
| Chantaburi Seafood Co., Ltd. *. | |
| Chanthaburi Frozen Foods Co., Ltd. *. | |
| Charoen Pokphand Foods Public Co. Ltd. | |
| Chonburi L C. | |
| Chue Eie Mong Eak. | |
| Core Seafood Processing Co., Ltd. | |
| Crystal Frozen Foods. | |
| Daedong (Thailand) Co. Ltd. | |
| Daiei Taigen (Thailand) Co., Ltd. | |
| Dynamic Intertransport. | |
| Earth Food Manufacturing Co., Ltd. | |
| Euro-Asian International Seafoods Co., Ltd. | |
| Fait. | |
| Far East Cold Storage Co., Ltd. | |
| Findus (Thailand) Co., Ltd. | |
| Fishery Cold Storage Public. | |
| Fortune Frozen Foods (Thailand) Co., Ltd. | |
| Gallant Ocean (Thailand) Co., Ltd. | |
| Good Fortune Cold Storage Company Limited. | |
| Good Luck Product Co., Ltd. | |
| Grobest Frozen Foods Co, Ltd. | |
| H.A.M. International Co., Ltd. | |
| Haitai Seafood Co., Ltd. | |
| Heng Seafood Ltd. Part. | |
| Heritrade. | |
| HIC (Thailand) Co., Ltd. | |
| High Way International Co., Ltd. | |
| Instant Produce. | |
| I.T. Foods Industries Co., Ltd. | |
| International Pacific Marine Products. | |
| Inter-Oceanic Resources Co., Ltd ****. | |
| Inter-Pacific Marine Products Co., Ltd. | |
| Intersia Foods Co, Ltd. | |
| K D Trdg. | |
| KF Foods. | |
| K.L. Cold Storage Co., Ltd. | |
| Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd. | |
| Kingfisher Holdings Ltd ****. | |
| Klang Co., Ltd ***. | |
| Kitchens of the Ocean (Thailand) Ltd. | |
| Kongphop Frozen Foods Co., Ltd. | |
| Kosamut Frozen Foods Co., Ltd. | |
| Lee Heng Seafood Co., Ltd. | |
| Leo Transports. | |
| Li-Thai Frozen Foods Co., Ltd. | |
| Lucky Union Foods. | |
| MKF Interfood. | |

| | Period to be reviewed |
|---|---|
| Magnate & Syndicate Co., Ltd. | |
| Mahachai Food Processing Co., Ltd. | |
| Marine Gold Products Co., Ltd. | |
| May Ao Co., Ltd. | |
| May Ao Foods Co., Ltd. | |
| Merkur Co., Ltd. | |
| Ming Chao Ind Thailand. | |
| N&N Foods Co., Ltd. | |
| Namprik Maesri. | |
| Narong Seafood Co., Ltd ****. | |
| Nongmon SMJ Products. | |
| N R Instant Produce. | |
| Ongkorn Cold Storage Co., Ltd. | |
| Pacific Queen Co., Ltd. | |
| Pakfood Public Company Limited *****. | |
| Penta Impex. | |
| Phattana Frozen Food Co., Ltd. *. | |
| Phattana Seafood Co., Ltd. *. | |
| Piti Seafoods Co., Ltd. | |
| Premier Frozen Products Co., Ltd. | |
| Preserved Foods. | |
| Queen Marine Food Co., Ltd. | |
| Rayong Coldstorage (1987) Co., Ltd. | |
| S&D Marine Products Co., Ltd. | |
| S. Chaivaree Cold Storage Co., Ltd. | |
| S.C.C. Frozen Seafood Co., Ltd. *. | |
| SCT Co., Ltd. | |
| S Khonkaen Food Ind Public ****. | |
| SMP Food Products Co., Ltd. | |
| Samui Foods. | |
| Sea Bonanza Food Co., Ltd ****. | |
| Sea Wealth Frozen Food Co., Ltd. | |
| Seafoods Enterprise Co., Ltd. | |
| Seafresh Fisheries. | |
| Seafresh Industry Public Co., Ltd. | |
| Search & Serve. | |
| Shianlin Bangkok Co., Ltd. ***. | |
| Siam Canadian Foods Co., Ltd. | |
| Siam Food Supply Co., Ltd. | |
| Siam Intersea Co., Ltd. | |
| Siam Marine Products Co., Ltd. | |
| Siam Ocean Frozen Foods Co., Ltd. | |
| Siamchai International Food Co., Ltd. | |
| Sky Fresh. | |
| Smile Heart Foods Co. Ltd. | |
| Songkla Canning. | |
| Star Frozen Foods Co., Ltd. | |
| STC Foodpak Co., Ltd. | |
| Suntechthai Intertrdg. | |
| Surapon Foods Public Co., Ltd. | |
| Surapon Nichirei Foods Co., Ltd. | |
| Surat Seafoods Co., Ltd. | |
| Suratthani Marine Products Co., Ltd. | |
| Suree Interfoods. | |
| T.S.F. Seafood Co., Ltd. | |
| Tanaya Intl. | |
| Takzin Ssmut *****. | |
| Teppitak Seafood. | |
| Tey Seng Cold Storage Co., Ltd. | |
| Tep Kinsho Foods. | |
| Thai-ger Marine Co., Ltd. | |
| Thai Agri Foods Public Co., Ltd. | |
| Thai Excel Foods Co., Ltd. | |
| Thai I-Mei Frozen Foods Co., Ltd. | |
| Thai International Seafoods Co., Ltd. *. | |
| Thai Mahachai Seafood Products Co., Ltd. | |
| Thai Ocean Venture. | |
| Thai Prawn Culture Center Co., Ltd. | |
| Thai Royal Frozen Food Co. Ltd. | |
| Thai Spring Fish Co., Ltd. | |
| Thai Union Frozen Products Public Co., Ltd. | |
| Thai Union Mfg. | |
| Thai Union Seafood Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Thai World Imports & Exports. | |
| Thai Yoo. | |
| Thailand Fishery Cold Storage Public Co., Ltd. *. | |
| Thanaya Intl. | |
| The Siam Union Frozen Food Co., Ltd ****. | |
| The Union Frozen Products Co., Ltd. **. | |
| Trang Seafood Products Public Co., Ltd. | |
| Transamut Food Co., Ltd. | |
| United Cold Storage Co., Ltd. | |
| Wales & Co. Universe Ltd. *. | |
| Wann Fisheries Co., Ltd. | |
| Xian-Ning Seafood Co., Ltd. | |
| Y2K Frozen Foods Co., Ltd. *. | |
| Yeenin Frozen Foods Co., Ltd. | |

**Note 1—**In the 2004–2006 administrative review, the Department preliminarily found that the following companies comprised a single entity: Aquática Maricultura do Brasil Ltda. and Aquafeed do Brasil Ltda. If the Department makes a final determination that these companies comprise a single entity in the 2004–2006 administrative review, we will also treat these companies as a single entity for purposes of this administrative review, absent information to the contrary.

**Note 2—**In the original investigation, the Department found that the following companies comprised a single entity: Central de Industrializacao e Distribuicao de Alimentos Ltda. and Cia. Exportadora de Produtos do Mar (Produmar).

(The company names ''Central de Industria'' and ''Cida Central de Industria'', for which we also received requests for review, are variations of the name Central de Industrializacao e Distribuicao de Alimentos Ltda.) Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this Administrative review.

**Note 3—**We received a request for an administrative review of both Compescal—Comercio de Pescado Aracatiense Ltda. and Comercio de Pescado Aracatiense Ltda. There is a letter on the record of the 2004–2006 administrative review stating that these companies are the same. Therefore, we are initiating the 2006–2007 administrative review with respect to Compescal—Comercio de Pescado Aracatiense Ltda.

**Note 4—**In the original investigation, the Department found that the following companies comprised a single entity: Empresa de Armazenagem Frigorifica Ltda. and Maricultura Netuno S.A. (The company name ''Empaf—Empresa de Armazenagem Frigorifica Ltda.'', for which we also received a request for review, is a variation of the name Empresa de Armazenagem Frigorifica Ltda.) Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

**Note 5—**We received requests for review of Marine Maricultura do Nordeste SA, Marine Maricultura do Nordeste and Marine Maricultura Nordeste SA. In the 2004–2006 administrative review, we confirmed that Marine Maricultura do Nordeste SA, Marine Maricultura do Nordeste and Marine Maricultura Nordeste SA are, in fact, the same company, and that the correct company name is Marine Maricultura do Nordeste SA. Therefore, we are initiating the 2006–2007 administrative review with respect to Marine Maricultura do Nordeste SA.

**Note 6—**The petitioners and/or the LSA's requests for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as separate entities.

**Note 7—**We received a request for an administrative review of both Potiguar Alimenbtos do Mar Ltda. and Potiguar Aliments do Mar Ltda. In the 2004–2006 administrative review, the petitioners withdrew the request for review of Potiguar Alimenbtos do Mar Ltda. because the spelling of the company name contained a typographical error. The correct spelling of the company name is Potiguar Alimentos do Mar Ltda. Therefore, we are initiating the 2006–2007 administrative review with respect to Potiguar Alimentos do Mar Ltda., not Potiguar Alimenbtos do Mar Ltda.

^ The LSA's requests for review included certain companies with similar names. For purposes of initiation, we have treated these companies as the same entity based on information obtained in the 2004–2006 administrative review.

# In the 2004–2006 administrative review, the Department preliminarily found that the following companies comprised a single entity: Devi Marine Food Exports Private Limited, Kader Investment and Trading Company Private Limited, Kader Exports Private Limited, Liberty Frozen Foods Private Limited, Liberty Oil Mills Limited, Premier Marine Products, and Universal Cold Storage Private Limited. If the Department makes a final determination that these companies comprise a single entity in the 2004–2006 administrative review, we will also treat these companies as a single entity for purposes of this administrative review, absent information to the contrary.

## In the 2004–2006 administrative review, the Department preliminarily found that Coastal Corporation Ltd. is the successor-in-interest to Coastal Trawlers Ltd. If the Department continues to make this finding in the final results of the 2004–2006 administrative review, we will rescind this review with respect to Coastal Trawlers Ltd.

### In the 2004–2006 administrative review, S B Agro (India) Ltd. informed the Department that it changed its name in January 2001 and it is now doing business as Sun-Bio Technology Limited. Therefore, in this review, the Department intends to request information from Sun-Bio Technology Limited. If we determine that S B Agro (India) Ltd. no longer exists, we will rescind the review with respect to this company name.

#### In the 2004–2006 administrative review, Sagarvihar Fisheries Pvt. Ltd. informed the Department that it is now doing business as Indepesca Overseas Pvt. Ltd. However, in the course of that review, petitioner withdrew its review request for Sagarvihar Fisheries Pvt. Ltd. Therefore, the Department will only include Sagarvihar Fisheries Pvt. Ltd. in this review (via its exports under the name Indepesca Overseas Pvt. Ltd.) if it determines that Indepesca Overseas Pvt. Ltd. is the successor in interest to this company.

##### The petitioner's and/or the LSA's requests for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as separate entities.

###### The petitioner's and/or the LSA's requests for review included certain companies with similar names. For purposes of initiation, we have treated these companies as the same entity based on information obtained in the 2004–2006 administrative review.

* In the original investigation, the Department found that the following companies comprised a single entity: Andaman Seafood Co., Ltd., Chantaburi Seafood Co., Ltd., Chanthaburi Frozen Foods Co., Ltd., Phattana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thai International Seafoods Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Wales & Co. Universe Ltd., and Y2K Frozen Foods Co., Ltd. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

** In the original investigation, the Department found that the following companies comprised a single entity: Union Frozen Products Co., Ltd. and Bright Sea Co., Ltd. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

****The petitioner's and/or the LSA's requests for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as separate entities.

**** The petitioner's and/or the LSA's requests for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as the same entity based on information obtained in the 2004–2006 administrative review.

***** In the first administrative review of this proceeding, the Department preliminarily found that the following companies comprised a single entity: Pakfood Public Company Limited, Asia Pacific (Thailand) Co., Ltd. and Takzin Samut Company Limited. If the Department makes a final determination that these companies comprise a single entity in the 2004–2006 administrative review, we will also treat these companies as a single entity for purposes of this administrative review, absent information to the contrary.

**Incomplete Requests for Review**

We have not initiated administrative reviews with respect to the companies listed below which the Department was unable to locate in prior segments and for which no new information as to the party's location was provided by the requestor. Although the LSA requested that the Department reconsider this decision, we continue to find that it is inappropriate to initiate an administrative review of companies which we know that we cannot locate. Based on previous unsuccessful efforts by the Department to locate these companies, further efforts would be futile, absent new information as to their location.

Brazil

Aquamaris Aquaculture SA
Camaros do Brasil Ltda.
Camexim Captura Mec Exports Imports
Campi Camaroa do Piaui Ltda.
Juno Ind & Com de Pescados
Ortico
Produvale Produtos do Vale Ltda.
Seafarm Criacao E Comericio de Produtos Aquaticos Ltda.
SM Trading Industria E Comercio Ltda.
Terracor Tdg Exp. E Imp. Ltda.

Ecuador

Brimon, S.A.

India

Adani Exportse
Alfuzz Frozen Foods Pvt. Ltd.
AMI Enterprises
Baby Marine Sarass
Bengal Marine Pvt. Ltd.
Bluefin Enterprises
Central Calcutta Cold Storage
Exporter Coreline Exports
Fernando Intercontinental
Gadre Marine Exports
Galaxy Maritech Exports P. Ltd.
Indo Aquatics
Lourde Exports
Markoorlose Sea Foods
Msngr Aqua Intl
Noorani Exports Pvt. Ltd.
Overseas Marine Export
Premier Seafoods Exim (P) Ltd.
Razban Seafoods Ltd.
Reddy & Reddy Importers & Exports
Riviera Exports Pvt. Ltd.
S & S Seafoods
Safa Enterprises
Santhi Fisheries & Exports Ltd.
Shivaganga Marine Products
Shroff Processed Food & Cold ZStorage P Ltd.
Tim Tim Far East Export Trading Co.(P) Ltd
V.S Exim Pvt Ltd.

Thailand

Assoc. Commercial Systems
Daiho (Thailand) Co., Ltd.
Frozen Marine Products Co., Ltd.
Yong Siam Enterprise Co., Ltd.

**Selection of Respondents**

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either: (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 of subject merchandise from the exporting country that can be reasonably examined.

Due to the large number of firms requested for these administrative reviews and the resulting administrative burden to review each company for which a request has been made, the Department is exercising its authority to limit the number of respondents selected for review. *See* section 777A(c)(2) of the Act. In selecting the respondents for individual review, the Department intends to select the largest exporters/producers by U.S. sales/export volume.

**Quantity and Value (''Q&V'') Questionnaire**

In advance of issuance of the antidumping questionnaire, we will also be requiring all parties for whom a review is requested to respond to a Q&V questionnaire, which will request information on the respective quantity and U.S. dollar sales value of all exports of shrimp to the United States during the period February 1, 2006, through January 31, 2007. The Q&V questionnaire will be available on the Department's Web site at *http://www.trade.gov/ia/*. The responses to the Q&V questionnaire are due to the Department by close of business on April 23, 2007. Due to the time constraints imposed by our statutory and regulatory deadlines, the Department may be unable to grant any extensions for the submission of the Q&V questionnaire responses. In responding to the Q&V questionnaire, please refer to the instructions contained in the Q&V questionnaire.

All firms requested for review are required to submit a complete response to the Q&V questionnaire, within the time limits established in this notice of initiation, in order for such information to receive consideration. For parties that fail to timely respond to the Q&V questionnaire, the Department may resort to the use of facts otherwise available, and may employ an adverse inference if the Department determines that the party failed to cooperate by not acting to the best of its ability. *See* section 776 of the Act. All information submitted by respondents in these administrative reviews is subject to verification. *See* section 782 of the Act. Due to the large number of parties in these proceedings, and the Department's need to complete its proceedings within the statutory deadlines, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the Q&V questionnaire will be available on the Department's Web site at *http://www.trade.gov/ia/*.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://www.trade.gov/ia/*.

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: April 2, 2007.

**James P. Maeder,**

*Director, AD/CVD Operations, Office 2.*

[FR Doc. E7–6504 Filed 4–5–07; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–201–817]**

## Oil Country Tubular Goods from Mexico: Amended Final Results of Antidumping Duty Administrative Review

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

**SUMMARY:** On January 16, 2007, a Bi–National Panel (''Panel'') constituted under the North American Free Trade Agreement (''NAFTA'') affirmed the U.S. Department of Commerce's (''the Department's'') redetermination on remand of the final results of the fourth antidumping duty administrative review on oil country tubular goods from Mexico. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Review and Determination Not to Revoke*, USA–MEX–2001–1904–05. The Department is now issuing these amended final results for this fourth

administrative review to reflect the Panel's decision.

**EFFECTIVE DATE:** April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 21, 2001, the Department published the final results of the antidumping duty administrative review on oil country tubular goods (''OCTG'') for the period August 1, 1998 to July 31, 1999. *See Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part*, 66 FR 15832 (''Final Results'') and accompanying Issues and Decision Memorandum (''Decision Memo''). The Department reviewed sales to the United States by Hylsa S.A. de C.V. (''Hylsa'') and Tubos de Aceros de Mexico, S.A. (''TAMSA''), both Mexican producers of OCTG. In the fourth administrative review, both TAMSA and Hylsa requested revocation from the order in accordance with 19 CFR § 351.222(e)(1). The Department declined to revoke the order in part with respect to TAMSA, as it determined that TAMSA ''did not sell the subject merchandise in the United States in commercial quantities in each of the three years cited by TAMSA to support its request for revocation.'' *See* Decision Memo at page 10. The Department declined to revoke the order in part with respect to Hylsa due to the finding of a dumping margin in the Final Results. Id. at 23.

Subsequent to the completion of the fourth administrative review, both Hylsa and TAMSA challenged the Department's findings and requested that a Bi–National Panel review the final determination. A public hearing was held on July 20, 2005, in Washington, D.C., at which oral arguments were presented by the parties. The Panel issued a Decision of the Panel on January 27, 2006, upholding the Department's determinations with respect to TAMSA, but remanding the review to the Department with respect to Hylsa (*i.e.*, to recalculate Hylsa's packing cost and cost of production (''COP'') on a product–specific basis). *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke*, USA–MEX–01–1904–05 (January 27, 2006) (''*First Decision*'').

In accordance with the First Decision, the Department filed its remand results on April 27, 2006. Based on the instructions of the Panel, the Department recalculated Hylsa's packing and cost of production by product costs and calculated a new antidumping duty margin of zero for Hylsa. The Department then conducted a revocation analysis, but found that Hylsa did not ship in commercial quantities to the U.S. market during the time period under consideration and found that dumping by Hylsa in the ninth administrative review was relevant to the determination of whether the antidumping duty order was otherwise necessary to offset dumping. Based on these factors, the Department declined to revoke the order. *See* Redetermination on Remand, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, April 27, 2006.

On August 11, 2006, the Panel again remanded the decision to the Department for further consideration. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke*, USA–MEX–01–1904–05 (August 11, 2006) (''*Second Decision*''). The Panel rejected the Department's reliance on the results of the ninth administrative review and also directed the Department to reexamine its revocation analysis ''in light of the issues raised by the Panel.'' Id. at 21. In accordance with the Second Decision, the Department reexamined Hylsa's request for revocation under 19 CFR § 351.222(e)(1) and determined that Hylsa had not made sales in commercial quantities for the three review periods under analysis. *See* Redetermination on Remand, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, October 5, 2006 at 13–16.

On January 16, 2007, the Panel affirmed the Department's second remand redetermination. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke*, USA–MEX–01–1904–05 (January 16, 2007). The Panel issued its Notice of Final Panel Action on February 2, 2007. On March 14, 2007, the NAFTA Secretariat published a notice of completion of the panel review. *See North American Free–Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review*, 72 FR 11847 (March 14, 2007). The Department also published a notice of the NAFTA decision not in harmony with the final results of the fourth administrative review. *See Oil Country Tubular Goods from Mexico: Notice of NAFTA Panel Decision Not In Harmony With Final Results of Administrative Review*, 72 FR 12761 (March 19, 2007).

## Amendment to Final Results

We are now amending the final results of this administrative review to reflect the final decision of the Panel. The changes to our calculations with respect to Hylsa resulted in a change in the weighted–average margin from 0.79 percent to zero percent for the period of review. The Department will instruct U.S. Customs and Border Protection to liquidate entries of OCTG from Mexico produced by TAMSA and Hylsa at the assessment rates the Department calculated for these amended final results of review.

## Assessment

The Department intends to issue assessment instructions to U.S. Customs and Border Protection 41 days after the date of publication of this decision. See section 356.8(a) of the Department's regulations.

This notice serves as a 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(a)(3). Timely written notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 2, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7–6512 Filed 4–5–03; 8:45 am]

BILLING CODE 3510–DS–S

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# DEPARTMENT OF COMMERCE

## Minority Business Development Agency

## White House Initiative on Asian Americans and Pacific Islanders, President's Advisory Commission on Asian Americans and Pacific Islanders

**AGENCY:** Minority Business Development Agency, Department of Commerce.

**ACTION:** Notice of public teleconference meeting.

**SUMMARY:** The President's Advisory Commission on Asian Americans and Pacific Islanders (Commission) will convene a teleconference meeting on April 23, 2007 to deliberate the draft Commission report to the President. This meeting is open to the public and interested persons may listen to the teleconference by using the call-in number and pass code provided below (see **ADDRESSES**).

**DATES:** Monday, April 23, 2007, beginning at 3:15 p.m. (EDT).

**ADDRESSES:** By telephone: Beginning at 3 p.m. (EDT) on Monday, April 23, 2007, members of the public may call 1–888–791–2132 and dial pass code 6105564 to access the teleconference. Advance registration is not required.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Commission, please contact Ms. Cianna Ferrer, Executive Assistant, Office of the White House Initiative on Asian Americans and Pacific Islanders, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 5612, Washington, DC 20230; telephone (202) 482–3949; facsimile (202) 501–6239; e-mail: *info@aapi.gov*. Note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce is subject to extensive security screening.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), public announcement is made of the Commission's intent to convene a teleconference meeting on April 23, 2007. This meeting is open to the public and interested persons may listen to the teleconference by using the call-in number and pass code set forth above (see **ADDRESSES**). Advance registration is not required to access the teleconference.

Prospective agenda items for the meeting include a deliberation of the draft Commission report to the President, administrative tasks and such other Commission business as may arise during the course of the meeting. In addition, the Commission welcomes interested persons to submit written comments to the Office of the White House Initiative on Asian Americans and Pacific Islanders (see **FOR FURTHER INFORMATION CONTACT**) at any time before or after the meeting. To facilitate distribution of written comments to Commission members prior to the meeting, the Commission suggests that comments be submitted by facsimile or by e-mail no later than April 19, 2007. The Commission will not be receiving public comment during the meeting.

Dated: April 2, 2007.

**Ronald N. Langston,**

*National Director, Minority Business Development Agency.*

[FR Doc. E7–6420 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–21–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket Number: 070309054–7055–01]**

### NIST Center for Neutron Research (NCNR) Neutron Research and Neutron Scattering, and Sample Environment Equipment Financial Assistance Programs; Availability of Funds

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announces that the following programs are soliciting applications for financial assistance for FY 2007: (1) NCNR Neutron Research and Neutron Scattering Financial Assistance Program, and (2) the NCNR Sample Environment Equipment Financial Assistance Program. Each program will only consider applications that are within the scientific scope of the program as described in this notice and in the detailed program descriptions found in the Federal Funding Opportunity (FFO) announcement for these programs.

**DATES:** Complete paper and electronic applications for each program must be received by 5 p.m. Daylight Savings Time on May 7, 2007.

**ADDRESSES:** For both programs, a complete application package may be obtained by contacting Tanya Burke, National Institute of Standards and Technology, NIST Center for Neutron Research, 100 Bureau Drive, Mail Stop 6100, Gaithersburg, MD 20899–6100.

**FOR FURTHER INFORMATION CONTACT:** For complete information about both programs and instructions for applying by paper or electronically, read the Federal Funding Opportunity Notices (FFO) at *http://www.grants.gov*. A paper copy of the FFO may be obtained by calling (301) 975–6328. The NCNR Neutron Research and Neutron Scattering Financial Assistance Program and the NCNR Sample Environment Equipment Financial Assistance Program will publish separate FFOs on *www.grants.gov*. For both programs, technical questions may be directed to Dr. Dan Neumann, NIST Center for Neutron Research, NIST, 100 Bureau Drive, Mail Stop 6102, Gaithersburg, MD 20899–6102; telephone: (301) 975–5252; e-mail: *Dan.Neumann@nist.gov*. For both programs, grants administration questions should be addressed to Judy Murphy, NIST Grants and Agreements Management Division, NIST, 100 Bureau Drive, Mail Stop 1650, Gaithersburg, MD 20899–1650; telephone: (301) 975–5603; e-mail: *judy.murphy@nist.gov*. The NCNR Web site is: *http://www.ncnr.nist.gov.*

For assistance with using Grants.gov, contact *support@grants.gov*.

**SUPPLEMENTARY INFORMATION:**

*Catalog of Federal Domestic Assistance Name and Number:* Measurement and Engineering Research and Standards—11.609.

*Statutory Authority:* 15 U.S.C. 272(b)(7) and (c)(8, 10, 16, 17, 19).

*Application Submission:* Paper Applications—Each applicant must submit one signed original and two paper copies of the complete application as described in the Federal Funding Opportunity to Tanya Burke, National Institute of Standards and Technology, Center for Neutron Research, STOP 6100, Gaithersburg, Maryland 20899–6100, telephone (301) 975–4711. Facsimile, electronic mail, and other forms of electronic application submissions, other than electronic applications submitted through Grants.gov, will not be accepted.

*For electronic submission:* Applicants should follow the Application Instructions provided at Grants.gov when submitting a response to this funding opportunity. Applicants are encouraged to start early and not wait to the approaching due date before logging on and reviewing the instructions for submitting an application through Grants.gov.

*Eligibility:* The NCNR Neutron Research and Neutron Scattering Financial Assistance Program and the NCNR Sample Environment Equipment Financial Assistance Program are open to institutions of higher education; hospitals; nonprofit organizations; commercial organizations; State, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

*Cost Sharing or Matching:* There is no cost sharing or matching requirements for these programs.

**NCNR Neutron Research and Neutron Scattering Financial Assistance Program**

*Program Description:* The primary program objectives of the financial assistance program in Neutron Research and Neutron Scattering are to develop new areas of neutron instrumentation with emphasis on cold neutrons; to explore and develop new areas of neutron scattering science, with emphasis on macromolecular science, condensed matter physics, and chemistry; to explore and develop new areas of neutron imaging or neutron physics; to assist and train NCNR facility users in their research; and to conduct other outreach and educational activities that advance the use of neutrons by U.S. university and industrial scientists. This will entail stationing scientific staff at the NCNR who, in collaboration with NIST and visiting scientists, advance these objectives.

NIST does not require or anticipate full scope proposals, *i.e.* proposals need not address the fields of Neutron Research (which includes neutron imaging and neutron physics) and Neutron Spectroscopy (which includes neutron diffraction and neutron spectroscopy) at the same time. Proposals should instead be focused on one (or more) of the primary objectives listed above, *i.e.* the development of neutron instrumentation, new areas of neutron scattering science, new areas of neutron imaging, and/or new areas of neutron physics. Applicants and team members must possess the education, experience, and training, to pursue and advance the fields of Neutron Research or Neutron Scattering efficiently. In addition, the applicant and team members must possess a demonstrated record of excellence in the development of neutron instrumentation or in research involving neutron imaging, neutron physics, or neutron scattering methods.

Additional information on the NCNR can be found at: *http://www.ncnr.nist.gov.*

*Funding Availability:* The funding instrument used in this program will be a cooperative agreement. The nature of NIST's ''substantial involvement'' will generally be collaboration with the recipient(s) by working jointly with recipient scientists in carrying out the scope of work, or specifying direction or redirection of the scope of work due to inter-relationships with other programs requiring such cooperation.

Proposals will be considered for cooperative agreements with durations of up to five years, subject to the availability of funds, satisfactory progress, and the continuing relevance to the objectives of the NIST Center for Neutron Research. The anticipated level of funding is up to $5,000,000 ($5 million) per year. One to five awards are likely.

NIST will determine whether to fund one award for the full amount; to divide available funds into multiple awards of any size, and negotiate scopes of work and budgets as appropriate; or not to select any proposal for funding, upon completing the selection process described below.

Awards are anticipated to contain a start date of September 3, 2007.

*Review and Selection Process:* All applications received in response to this announcement will be reviewed to determine whether they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes and destroy all other copies.

Responsive proposals will be evaluated using the Evaluation Criteria for the NCNR Neutron Research and Neutron Scattering Financial Assistance Program described in this notice by an independent, objective panel composed of at least four individuals who are knowledgeable about neutron research, neutron spectroscopy, and neutron instrumentation. The reviewers will reach a consensus score resulting in a rank order of applicants. However, if non-Federal reviewers are used, each reviewer will evaluate and provide a score for each proposal without reaching a consensus.

The NCNR Director, serving as the Selecting Official, will make the award selection. In making the award selection, the NCNR Director will take into consideration the panels' technical evaluation. The NCNR Director, as the Selecting Official, may choose a proposal out of rank order based upon one or more of the following factors: (1) Availability of funds, (2) Redundancy, (3) Balance/distribution of funds by research areas described in the Funding Opportunity Description section of this Notice, (4) Program objectives described above in the Funding Opportunity Description section of this Notice, and (5) Logistical concerns that would be detrimental to the success or timely completion of the proposal objectives. Therefore, the highest scoring proposals may not necessarily be selected for an award. If an award is made to an applicant that deviates from the scores of the reviewers, the NCNR Director shall justify the selection in writing based on selection factors described above. The NCNR Director may select all, none, or some of the applications for funding.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, whether the application furthers the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

*Evaluation Criteria:* For the NCNR Neutron Research and Neutron Scattering Financial Assistance Program, the technical reviewers will use the following criteria to evaluate the proposals:

1. Qualifications and experience of the Principal Investigator in neutron research or neutron scattering as demonstrated by extensive publications and invited lectures in condensed matter physics, chemistry, material science, macromolecular science, neutron imaging, neutron physics, or related fields. (20%)

2. Qualifications and experience of the proposed university staff in neutron research or neutron scattering or in related scientific or engineering areas that are key to the activities contained in the proposal, as demonstrated by resumes of staff proposed for this program. (10%)

3. Quality of the proposed research and development plan and its potential impact on neutron research or neutron scattering, particularly in the areas of condensed matter physics, chemistry, material science, macromolecular science, neutron imaging, or neutron physics. (20%)

4. Quality of the plan in terms of providing research assistance to U.S. neutron researchers using the NCNR facilities, including related training, education, and outreach. (30%)

5. Quality of the plan to integrate university staff effectively into the activities of the NCNR facility,

including establishing robust communications between the university and the NCNR. (15%)

6. Cost effectiveness of the plan, including the completeness of the estimate to achieve the objectives stated in the proposal. (5%)

**NCNR Sample Environment Equipment Financial Assistance Program**

*Program Description:* The primary objectives of this financial assistance program are to develop, design, and construct new, state-of-the-art equipment for dedicated use by the general scientific community on NCNR neutron beam stations that provide specific and well-controlled environments of scientific interest for in-situ studies of the microscopic properties of a broad range of sample materials such as molecular solids, thin films, biomolecules and biological membranes, solid state materials, polymers, and complex fluids, using neutron scattering and imaging techniques. Examples of sample environments include high (and/or pulsed) magnetic fields, high pressures, high (and/or pulsed) electric fields, variable humidity, high or low temperatures, variable shear, and various combinations thereof. A list of all the sample environment equipment at the NCNR that is currently available to the general user community is located at *http://www.ncnr.nist.gov/equipment/ancequip.html.*

Applicants and team members must possess the education, experience, and training, to pursue and advance the field of Neutron Scattering efficiently. In addition, the applicant and team members must possess a demonstrated record of excellence in research involving neutron scattering methods. In some cases one or more scientific staff members may be stationed at the NCNR to work in collaboration with NIST and other visiting scientists to help advance these program objectives.

Additional information on the NCNR can be found at: *http://www.ncnr.nist.gov.*

*Funding Availability:* The funding instrument used in this program will be a cooperative agreement. The nature of NIST's ''substantial involvement'' will generally be collaboration with the recipient(s) by working jointly with recipient scientists in carrying out the scope of work, or specifying direction or redirection of the scope of work due to inter-relationships with other programs requiring such cooperation.

Proposals will be considered for cooperative agreements with durations of up to three years, subject to the availability of funds, satisfactory progress, and the continuing relevance to the objectives of the NIST Center for Neutron Research. The anticipated level of funding is up to $150,000 per year. One to two awards are likely.

NIST will determine whether to fund one award for the full amount; to divide available funds into multiple awards of any size, and negotiate scopes of work and budgets as appropriate; or not to select any proposal for funding, upon completing the selection process described below.

Awards are anticipated to contain a start date of September 3, 2007.

*Review and Selection Process:* All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes and destroy all other copies.

Responsive proposals will be evaluated using the above criteria by an independent, objective panel composed of at least four individuals who are knowledgeable about neutron research, neutron spectroscopy, and neutron instrumentation. The reviewers will reach a consensus score resulting in a rank order of applicants. However, if non-Federal reviewers are used, each reviewer will evaluate and provide a score for each proposal without reaching a consensus.

The NCNR Director, serving as the Selecting Official, will make the award selection. In making the award selection, the NCNR Director will take into consideration the panels' technical evaluation. The NCNR Director, as the Selecting Official, may choose a proposal out of rank order based upon one or more of the following factors: (1) Availability of funds, (2) Redundancy, (3) Balance/distribution of funds by research areas described in the Funding Opportunity Description section of this Notice, (4) Program objectives described above in the Funding Opportunity Description section of this Notice, and (5) Logistical concerns that would be detrimental to the success or timely completion of the proposal objectives. Therefore, the highest scoring proposals may not necessarily be selected for an award. If an award is made to an applicant that deviates from the scores of the reviewers, the NCNR Director shall justify the selection in writing based on selection factors described above. The NCNR Director may select all, none, or some of the applications for funding.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, whether the application furthers the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

*Evaluation Criteria:* For the NCNR Sample Environment Equipment Financial Assistance Program, the technical reviewers will use the following criteria to evaluate the proposals:

1. Qualifications and experience of the Principal Investigator in neutron scattering research, as demonstrated by extensive publications and invited lectures in condensed matter physics, chemistry, material science, polymer science, biology, macromolecular science, and/or related fields. (10%)

2. Qualifications and experience of the proposed university staff in neutron scattering research or in related scientific or engineering areas that are key to the activities contained in the proposal, as demonstrated by resumes of staff proposed for this program. (5%)

3. Feasibility and rationality of the design and construction plan of the proposed sample environment equipment and its potential impact on neutron-based research, particularly in the areas of biology, macromolecular science, polymer science, condensed matter physics, and chemistry. (30%)

4. Quality of the plan in terms of providing assistance to U.S. researchers using the NCNR neutron facilities through sustained and dedicated access to unique and novel sample environment equipment. (20%)

5. Quality of the plan to integrate the sample environment equipment for dedicated use on one or more of the NCNR research facility neutron beam stations. (25%)

6. Cost effectiveness of the plan, including the completeness of the

estimate to achieve the objectives stated in the proposal. (10%)

The following information applies to both programs announced in this notice:

*The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements:* The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389). On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block (68 FR 38402).

*Collaborations with NIST Employees:* All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

*Use of NIST Intellectual Property:* If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. sec. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section B.20 of the Department of Commerce Pre-Award Notification Requirements, published on December 30, 2004 (69 FR 78389). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

*Collaborations Making Use of Federal Facilities and Equipment:* All applicants are encouraged to make full use of any NCNR facilities and equipment deemed necessary, subject to approval by appropriate NIST management. Such use is at the sole discretion of NIST. All applications should include a description of any work proposed to be performed using Federal facilities and equipment. If an applicant proposes use of NIST facilities and equipment, the statement of work should include a statement of this intention and a description of the facilities and equipment. Prior to beginning the merit review process, NIST will verify the availability of the facilities and equipment and approval of the proposed usage. Any unapproved facility and equipment use will be stricken from the proposal prior to the merit review. Examples of some facilities and equipment that may be available for collaborations are listed on the NIST Technology Services Web site, *http://patapsco.nist.gov/ts/220/external/facilities.htm.*

*Initial Screening of all Applications:* All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

*Paperwork Reduction Act:* The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

*Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects:* Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) registered with DHHS and performed by entities possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) the derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/stemcell.pdf* for funding such research.

*Research Projects Involving Vertebrate Animals:* Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals,'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals

must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

*Limitation of Liability:* Funding for the programs listed in this notice is contingent upon the availability of funds. In no event will the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

*Executive Order 12866:* This funding notice was determined to be not significant for purposes of Executive Order 12866.

*Executive Order 13132 (Federalism):* It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

*Executive Order 12372:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*Administrative Procedure Act/ Regulatory Flexibility Act:* Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: March 30, 2007.

**James E. Hill,**

*Acting Deputy Director, NIST.*

[FR Doc. E7–6505 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. /807B]**

### Endangered Species; File No. 1607

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Grants Pass Irrigation District (GPID), 200 Fruitvale Drive, Grants Pass, Oregon, has applied in due form for an incidental take permit for Southern Oregon/Northern California coho salmon for purposes of the continued operation and maintenance of Savage Rapids Dam. Unlisted covered species include Klamath Mountains Province (KMP) steelhead (*Oncorhynchus mykiss*) and Southern Oregon/Northern California Coastal (SONCC) Chinook salmon (*O. tshawytscha*).

**DATES:** Written, telefaxed, or e-mail comments must be received on or before May 7, 2007.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Northwest Region, Oregon State Habitat Office, Habitat Conservation Division, NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232–1274; phone (503) 231–2202; fax (503) 231–6893; and Roseburg Field Office, NMFS, 2900 NW Stewart Parkway, Roseburg, OR 97470, phone (541) 957–3385; fax (541) 957–3386

Written comments or requests for a public hearing on this application should be mailed to the above address. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (503) 231–6893, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *Kenneth.Phippen@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1607.

**FOR FURTHER INFORMATION CONTACT:** Ken Phippen, (541)957–3385.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Permit application is related to the continued operation and maintenance of Savage Rapids Dam in Josephine and Jackson Counties, in the State of Oregon. The dam is owned and operated by the GPID for the sole purpose of providing irrigation water to its customers. The GPID Habitat Conservation Plan (HCP) utilizes a combination of conservation measures that are expected to minimize and mitigate, to the maximum extent practicable, the impacts of take of ESA-listed coho salmon, and unlisted Chinook salmon and steelhead during irrigation operations in the period 2007–2009. A 1-year extension is considered in the assessments of this HCP. The HCP also requires GPID to take certain steps during the time the permit is effective to work to secure authorization and funding for dam removal and to install off-site electrical pumping stations along the Rogue River near Grants Pass, Oregon, by November 1, 2009, to provide for the long-term conservation of listed and unlisted covered species. The Bureau of Reclamation has awarded a contract for constructing the irrigation pumps and dismantling the dam. Pump construction was initiated in October 2006 and is expected to be completed along with dam dismantling prior to this ITP's expiration. To ensure that the mitigation and minimization strategies are effective, the HCP incorporates a variety of monitoring components, and if needed, adaptive management changes in the conservation measures set forth. It is expected that incidental take of the listed and unlisted species will occur from the normal operations and maintenance of the dam.

Adult and juvenile SONC coho salmon from the Upper Rogue River population will be exposed to the SRD facilities that pose a physical threat to these individuals. Some adults from the Middle Rogue and Applegate rivers population may also venture above SRD or within the area downstream that is affected by the flow modifications of the dam. Adults must navigate the river and the altered flows from SRD in order to locate the fish ladders. The adults' upstream migration is likely to be delayed while flow conditions reach levels that allow the fish to navigate the fish ladders. Total mortality of juveniles caused by SRD is estimated to be 10 to 15 percent by Oregon Department of Fish and Wildlife. This may be decreased by ongoing conservation

measures, such as forebay lighting. However, this may be off-set by low-water years and a greater percentage of fish exposed to the turbines. Therefore, based on estimates of juvenile coho salmon population sizes and the effects described above, the annual injury and mortality of salmonid juveniles each year during the interim period is estimated to be between 1,400 and 2,500 fish. Total mortality of adult coho salmon is estimated to be between 200 and 1,200 fish annually. On an annual basis for the four years of potential operation (three years approved and one potential extension), fish salvage operations in the fall and spring will result in additional levels of harm for juvenile salmon and rarely for adults. In the fall there is potential for one adult coho salmon to be encountered during the shutdown operations of SRD. Both spring and fall situations will result in approximately 130 juvenile SONC coho salmon captured and released during the salvage operations. It is expected that up to 10 of these may die.

Dated: March 30, 2007.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–6412 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 031507B]**

### Draft Programmatic Environmental Impact Statement; Seismic Surveys in the Beaufort and Chukchi Seas, Alaska

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

**ACTION:** Notice of Availability of a Draft Programmatic Environmental Impact Statement; notice of public hearings.

**SUMMARY:** NMFS and the Minerals Management Service (MMS) announce the availability of a Draft Programmatic Environmental Impact Statement (Draft PEIS) for Seismic Surveys in the Beaufort and Chukchi Seas, Alaska and the times, dates, and locations for public hearings in order to receive comments from the public on the Draft PEIS.

**DATES:** Public hearings on the Draft PEIS are scheduled as follows:

1. April 10, 2007, 6:30 p.m. – 9 p.m., Anchorage, AK.
2. April 17, 2007, 7 p.m. – 10 p.m. Nuiqsuk, AK
3. April 18, 2007, 7 p.m. – 10 p.m. Barrow, AK
4. April 23, 2007, 7 p.m. – 10 p.m. Point Hope, AK
5. April 24, 2007, 7 p.m. – 10 p.m. Point Lay, AK
6. April 25, 2007, 7 p.m. – 10 p.m. Wainwright, AK

Written comments will be accepted at these hearings as well as during the comment period. Written comments must be postmarked no later than May 14, 2007.

**ADDRESSES:** Written comments on the Draft PEIS should be addressed to Mr. P. Michael Payne, Chief of the Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.ALASKAEIS@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the Draft PEIS may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.mms.gov/alaska/*.

The public hearings will be held at the following locations:

1. 3801 Centerpoint Drive, Anchorage, AK
2. City Hall, Nuiqsut, AK
3. Inupiat Heritage Center, Barrow, AK
4. Qalgi Center (City Hall), Point Hope, AK
5. High School Gymnasium, Point Lay, AK
6. Robert James Community Center, Wainwright, AK

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, (301) 713–2289, ext 128.

**SUPPLEMENTARY INFORMATION:**

#### Summary

On March 30, 2007, notice was published in the **Federal Register** of the availability of the subject Draft PEIS for review and comments. NMFS and MMS will hold public hearings under the National Environmental Policy Act (NEPA) to inform interested parties of the alternatives analyzed by NMFS and MMS and to accept comments on all aspects of the Draft PEIS.

#### Background

The NMFS and MMS have jointly prepared the subject Draft PEIS in order to fully describe and analyze the potential significant impacts on marine mammals, other Arctic marine life, and native subsistence lifestyles by reasonably foreseeable proposed offshore oil and gas seismic surveys off Alaska. This document also addresses a number of mitigation measures that have been identified as alternatives for potentially reducing impacts on identified affected environments, particularly marine mammals and the endangered bowhead whale. This PEIS will be used for issuing: (1) permits for oil and gas exploration in the Arctic Ocean by MMS, and (2) Incidental Harassment Authorizations (IHAs) to the seismic industry by NMFS to take marine mammals incidental to oil and gas seismic surveys in the Arctic Ocean. As sounds generated by seismic survey operations and related activities have the potential to adversely impact marine mammals and other marine resources, IHAs would be warranted, under the Marine Mammal Protection Act, in order to legally harass marine mammals (particularly bowhead whales), incidental to conducting seismic surveys.

#### Summary of Draft PEIS

*Activity*

The Draft PEIS describes and analyzes the potential significant environmental impacts related to reasonably foreseeable proposed geophysical exploration using seismic surveys in waters of the Arctic Alaska Outer Continental Shelf. Specifically, the Draft PEIS assesses the environmental impacts of up to 6 consecutive surveys each in the Beaufort and Chukchi seas using deep-penetration 2D and 3D streamer and ocean bottom cable surveys, and high-resolution surveys and the issuance of IHAs to take marine mammals by these activities. As the sound generated by a seismic-survey operation and related activities has the potential to adversely impact marine mammals and other marine resources, IHAs would be warranted in order to incidentally harass marine mammals (particularly bowhead whales) while conducting seismic surveys.

*Impacts*

The best available scientific information indicates that marine seismic surveys may adversely impact archaeological sites, marine invertebrates, coastal and marine birds, essential fish habitat, marine fish, commercial fisheries, marine mammals, the sociocultural environment, and subsistence-harvest activities. Therefore, the analysis contained in the Draft PEIS focused on these resource categories. Of critical importance to NMFS for the proposed action of issuing IHAs are the impacts on marine mammals

(particularly bowhead whales) and subsistence harvests from acoustic sounds. However, we expect these impacts can be mitigated through incorporation of specified mitigation measures.

*Alternatives/Mitigations*

NMFS/MMS have identified 9 alternatives, including the no action alternative. Analyzed alternatives range from issuance of MMS permits with and without mitigation measures. Specifically, the alternatives include different combinations of safety and exclusion zones for preventing injury (180/190 dB), limiting behavioral harassment (160 dB) and limiting impacts on feeding and migrating bowhead cow calf pairs (160 dB/120 dB, respectively). An identified alternative to protecting feeding and migration areas through specific temporal/spatial/operational restrictions to further reduce impacts to feeding/socializing/migrating aggregations of bowhead and gray whales and bowhead cow/calf pairs has also been analyzed. At this time, MMS and NMFS have not identified a preferred alternative.

**Special Accommodations**

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the person listed above (see **FOR FURTHER INFORMATION CONTACT**), at least five business days before the scheduled meeting date.

Dated: March 27, 2007.

**P. Michael Payne,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–6414 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 030607A]**

### Taking of Marine Mammals Incidental to Specified Activities; Open Water Seismic Operations in Cook Inlet, Alaska

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

**ACTION:** Notice of issuance of two incidental harassment authorizations.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that Incidental Harassment Authorizations (IHAs) to take marine mammals, by harassment, incidental to conducting seismic operations in the northwest portion of Cook Inlet, Alaska, have been issued to ConocoPhillips Alaska, Inc. (CPAI) and Union Oil Company of California (UOCC) for a period between mid-March and mid-June, 2007.

**DATES:** The authorization for CPAI is effective from March 30 until May 31, 2007; and the authorization for UOCC is effective from May 1 until June 15, 2007.

**ADDRESSES:** A copy of the application, IHA, Environmental Assessment (EA), and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Summary of Request**

On October 6 and on October 12, 2006, NMFS received applications from CPAI and UOCC, respectively, requesting Incidental Harassment Authorizations (IHAs) for the possible harassment of small numbers of the Cook Inlet beluga whale (*Delphinapterus leucas*), Steller lions (*Eumetopias jubatus*), Pacific harbor seals (*Phoca vitulina richardsi*), harbor porpoises (*Phocoena phocoena*), and killer whales (*Orcinus orca*) incidental to conducting open water seismic operations in portions of Cook Inlet, Alaska. A detailed description of these activities was published in the **Federal Register** on January 5, 2007 (72 FR 536). No change has been made to these proposed activities.

Both proposed operations use an ocean-bottom cable (OBC) system to conduct seismic surveys. OBC seismic surveys are used in waters that are too shallow for the data to be acquired using a marine-streamer vessel and/or too deep to have static ice in the winter. The proposed operations would be active 24 hours per day, but the airguns would only be active for 1 – 2 hours during each of the 3 – 4 daily slack tide periods. The source for the proposed OBC seismic surveys would be a 900–in$^3$ BOLT airgun array situated on the source vessel, the *Peregrine Falcon*. The array would be made up of 2 sub-arrays, each with 2 3–airgun clusters separated by 1.5 m (4.9 ft) off the stern of the vessel. One cluster will consist of 3 225–in$^3$ airguns and the second cluster

will have 3 75–in$^3$ airguns. During seismic operations, the sub-arrays will fire at a rate of every 10 – 25 seconds and focus energy in the downward direction as the vessel travels at 4 – 5 knots (4.6 – 5.8 mph). Source level of the airgun array is 249 dB re 1 microPa at 1 m (0 – peak), and the dominant frequency range is 8 – 40 Hz.

The geographic region for the seismic operation proposed by CPAI encompasses a 25 mi$^2$ (65 km$^2$) area in northwestern Cook Inlet, paralleling the shoreline from just offshore of the Beluga River south for about 6 km (3.7 miles). The approximate boundaries of the region of the proposed project area are 61°09.473′N, 151°11.987′W; 61°16.638′N, 151o02.198′W; 61°12.538′N, 150°49.979′W; and 61°05.443′N, 151o00.165′W. Water depths range from 0 to 24 m (80 ft). There will be a 1.6 km (1 mile) setback of operations from the mouth of the Beluga River to comply with Alaska Department of Fish and Game (ADFG) restrictions. The proposed seismic operations would occur from mid March depending on the time of ice breakup, and last until mid-May, 2007.

The geographic region for the activity proposed by UOCC encompasses a 28.2 km$^2$ (10.9 square miles) area in northwestern Cook Inlet, paralleling the shoreline offshore of Granite Point, and extending from shore into the inlet to an average of about 1.6 km (1 mile). The approximate boundaries of the region of the proposed project area are 61°00.827′N, 151°24.071′W; 61°02.420′N, 151°15.375′W; 61°00.862′N, 150°15.313′W; and 61°57.979′N, 151°23.946′W. There are no major rivers flowing into the open water seismic project area. Water depths range from 0 to 18 m (60 ft). The proposed seismic operations would begin as early as May 1 and end no later than June 15, 2007.

**Comments and Responses**

A notice of receipt and request for 30–day public comment on the applications and proposed authorizations was published on January 5, 2007 (72 FR 536). During the 30–day public comment period, NMFS received the following comments from the Marine Mammal Commission (Commission), the Humane Society of the United States (HSUS), the Center for Biological Diversity (CBD), the Whales and Dolphin Conservation Society (WDCS), the Animal Welfare Institute (AWI), CPAI, the Center for Regulatory Effectiveness (CRE), and one private citizen.

*General Comments*

*Comment 1:* The Commission recommends that NMFS issue the IHAs subject to the following stipulations:

(1) The applicants be required to institute monitoring and mitigation measures sufficient to afford the potentially affected marine mammals species adequate protection from sources of disturbance, including disturbance of behavior;

(2) The period of observation be extended from 15 to 30 minutes before it is assumed that an animal has moved beyond the safety zone;

(3) Observations be carried out during all ramp-up procedures to gather data regarding the effectiveness of ramp-up as a mitigation measures; and

(4) Operations be suspended immediately if a dead or seriously injured marine mammals is found in the vicinity of the operations and the death or injury could be attributable to the applicants' activities. Any suspension should remain in place until NMFS has (a) reviewed the situation and determined that further deaths or serious injuries are unlikely or (b) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

*Response:* NMFS agrees with the Commission's comments and recommendation that the applicants must institute monitoring and mitigation measures sufficient to afford the potentially affected marine mammal species adequate protection from sources of disturbance, including disturbance of behavior. As an additional measure of marine mammal monitoring, NMFS requires that CPAI conducting aerial monitoring of Cook Inlet beluga whales in the vicinity of the project area during seismic surveys between mid-March and mid-May (see Monitoring Section later in this document). The aerial surveys would determine the presence and relative numbers of belugas between east Susitna River and North Foreland and determine the location of belugas relative to seismic operations. No aerial monitoring is required for seismic operations by UOCC since the proposed project area and time would not have a relative high number of beluga whales.

NMFS also agrees with the Commission that the duration of pre-operation monitoring be extended to 30 minutes to make sure that no marine mammals are in the safety zone before the initiation of airgun firing. As is standard under IHAs, observation would also be conducted during all ramp-up procedures to ensure the effectiveness of ramp-up as a mitigation measure.

NMFS further agrees with the Commission that seismic operations must be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the project area and the death or injury of the animal could be attributable to the applicants' activities. This requirement is a conditions in the IHA.

*Comment 2:* CPAI urges NMFS to proceed with the authorization as proposed in the **Federal Register** notice (72 FR 536, January 5, 2007) and to require only the mitigation measures, monitoring and reporting procedures listed in the notice, including: (1) limiting the time and frequency of the operations and the use of airguns; (2) establishment of safety zones; (3) vessel speed and course alteration; (4) power-down procedures; (5) shut down procedures; (6) ramp-up procedures; (7) use of qualified NMFS-approved vessel-based marine mammal observers (MMOs); and (8) report of submission after the end of the project.

*Response:* The **Federal Register** notice (72 FR 536), published on January 5, 2007, provides a detailed description of the proposed seismic operations by CPAI and UOCC in upper Cook Inlet, the anticipated impacts to marine mammal species and/or stocks and their habitat within the project area, the potential effects on the subsistence harvest of these marine mammal species and/or stocks, and a list of proposed monitoring and mitigation measures to reduce the potential impacts that would result from the proposed actions. A thorough review by NMFS biologists of these projects, impacts, and monitoring and mitigation measures led NMFS to reach a preliminary determination the proposed projects, would result in no more than a negligible impact on such species or stocks, and would not have an unmitigable adverse impact on the availability of such species or stocks for subsistence uses, provided that all monitoring and mitigation measures are carried out.

After careful consideration, NMFS decided to add an additional monitoring measure to require CPAI to also conduct aerial monitoring of Cook Inlet beluga whales within its project area off Beluga River in upper Cook Inlet to ensure beluga whales are not displaced from their normal habitat. Please refer to the Monitoring Section later in this document for a detailed description of CPAI's aerial monitoring plan.

In addition, CAPI and UOCC are required to conduct pre-survey monitoring of marine mammals for 30 minutes to ensure that the safety zone

is free of marine mammals prior to initiating airgun firing, and that seismic operations must be suspended immediately if a dead or seriously injured marine mammals is found in the vicinity of the operations and the death or injury could be attributable to the applicants' activities. All these requirements are conditions of the IHAs.

*MMPA Concerns*

*Comment 3:* CBD states that NMFS did not make the distinction between ''small number'' and ''negligible impact'' while making the decision in the **Federal Register** notice (72 FR 536, January 5, 2007).

*Response:* NMFS disagree. The analysis provided in the **Federal Register** notice (72 FR 536, January 5, 2007) clearly described in detail the numbers of Cook Inlet beluga whales, Pacific harbor seals, and harbor porpoises that may be potentially taken by Level B harassment as a result of the seismic operations in upper Cook Inlet. Although no take number was estimated for Steller sea lions and killer whales within the project area due to their rare presence based on surveys conducted in recent years, NMFS believes that the harassment of these species would be much less likely than those of beluga whales and harbor seals. NMFS believes that the numbers for all affected species are small.

NMFS conducts separate detailed analyses on the levels of take by noise exposure and cumulative impacts to these marine mammal species and stocks from a wide spectrum in the past, current, and foreseeable future were also conducted and described in the aforementioned **Federal Register** notice and in the EA. These analyses led NMFS to conclude that while behavioral modifications, including temporarily vacating the area during the project period may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless finds that this action would result in no more than a negligible impact on these marine mammal species and/or stocks. NMFS also finds that the proposed action would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. Please refer to the **Federal Register** notice (72 FR 536, January 5, 2007) and the EA for a detailed description of the analysis.

*Comment 4:* CBD questions whether NMFS used the ''best available science'' in making its negligible impact statement. As CBD points out that in making its determination, NMFS must give the benefit of the doubt to the species rather than for the benefit of commercial exploitation.

*Response:* NMFS disagree. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment. An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. To reach a determination whether such take constitute a negligible impact to the marine mammal species or stock(s), NMFS must use the best available scientific information.

In reaching the determination for issuance of two IHAs for conducting seismic surveys in upper Cook Inlet, NMFS has consulted a number of scientific studies in this field and prepared an EA based on the most recent peer-reviewed information. Where information is unobtainable because of ethical concerns regarding conducting invasive and injurious effects on marine mammals, surrogate species or appropriate modeling is used in lieu of empirical information on marine mammals. This information are reviewed by the Commission and its Scientific Advisors, some of whom are experts on assessing impacts on marine mammals from underwater sound sources. The information contained in the EA has also been reviewed by endangered species biologists at NMFS Anchorage Field Office and expert in bioacoustics at NMFS Office of Protected Resources. Please refer to the **Federal Register** notice (72 FR 536, January 5, 2007) and the EA for a detailed description of NMFS analyses.

As NMFS has used the best science currently available in making its negligible impact determination and because NMFS always gives the benefit of the doubt to the species when making these determinations, NMFS believes that no harm will occur to these affected species and/or stocks.

*Comment 5:* The WDCS recommends that the IHA should not be issued and that seismic surveying should not be allowed to take place in the Cook Inlet. The WDCS further states that recent status review and extinction assessment reveals that Cook Inlet beluga whale population has not shown appreciable recovery since 1999, and should be listed under the Endangered Species Act (ESA) as an endangered species. The WDCS states that any added pressure to this population might push it beyond recovery.

*Response:* NMFS disagrees. As stated here and in the EA, NMFS determined that the proposed short-term action that has several mitigation measures incorporated to reduce impacts to the lowest level practicable would result in no more than a negligible impact on Cook Inlet beluga whales (72 FR 536, January 5, 2007). The Cook Inlet beluga whale listing action under the ESA is a separate action, that is currently under NMFS review and consideration.

*Comment 6:* CBD states that it does not believe NMFS can lawfully authorize any Level A harassment of Cook Inlet beluga whales.

*Response:* As stated in the **Federal Register** notice (72 FR 536, January 5, 2007), no take by Level A harassment (injury) or death is anticipated or authorized for the proposed Cook Inlet seismic operations.

*Comment 7:* CBD states that in light of the impending listing of the Cook Inlet beluga, NMFS should delay issuing any take authorization for the species until the ESA process is complete.

*Response:* NMFS cannot legally delay issuing a take authorization based on the impending listing of a species. Section 101(a)(5)(D) of MMPA establishes a 45–day time limit for NMFS review of an IHA application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization. An authorization shall be granted if NMFS finds, that as here, the taking will have a no more than negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth, such as the case of this action.

*NEPA Concerns*

*Comment 8:* The Commission is concerned about the potential impact of the proposed activities in conjunction with other factors that might be adversely affecting beluga whales (i.e.,

cumulative effects). The Commission states that such factors include increased vessel traffic, contaminants, military operations, waste management, urban runoff, and furthermore, a variety of new activities that are planned for Cook Inlet during the period for which the incidental taking authorizations are sought.

*Response:* NMFS concurs with the Commission's concern regarding the potential impact of the proposed activities in conjunction with other factors that might be adversely affecting the Cook Inlet beluga whale stock. NMFS also believes that extra caution is needed when proceed in authorizing any IHAs for Cook Inlet beluga whales, due to the precarious situation of this stock. Therefore, NMFS has conducted a detailed analysis on the cumulative impact on the environment which may result from the incremental impact of the proposed short-term seismic survey action when added to other past, present, and reasonably foreseeable future actions within upper Cook Inlet. The analyses are described in detail in the *Environmental Assessment on the Issuance of Incidental Harassment Authorizations to ConocoPhillips Alaska, Inc. and Union Oil Company of California to Take Marine Mammals by Harassment Incidental to Conducting Seismic Operations in Northwestern Cook Inlet, Alaska*.

*Comment 9:* CBD states that for the analyses on CPAI and UOCC's applications, NMFS must consider these effects together with all other activities that affect these species, stocks, and local populations, other anthropogenic risk factors such as other industrial development, climate change, and the cumulative effect of these activities over time.

*Response:* NMFS has conducted extensive analyses on the cumulative impact to marine mammal species within the proposed action areas in the EA. Please also refer to *Response* to *Comment 8*.

*Comment 10:* CBD states that NMFS cannot rationally adopt its EA and make a Finding of No Significant Impact (FONSI). CBD states that NMFS must prepare a full environmental impact statement (EIS) analyzing the effects of the proposed seismic surveys in the context of the cumulative effects of all other natural and anthropogenic impacts on the marine mammals, habitats and communities of Cook Inlet.

*Response:* In December, 2006, NMFS prepared a draft EA for public comment and review. During the 30–day comment period, rigorous reviews were conducted by NMFS scientists in the NMFS Alaska Office and by members of the Committee of Scientific Advisors on Marine Mammals of the Commission. In view of the information presented in this document and the analysis contained in the supporting draft EA prepared for this proposed action, and the best available scientific information on effects of sound on marine mammals, we have determined that the this action would not significantly impact the quality of the human environment.

In addition, monitoring and mitigation measures described in this document and in the supporting draft EA when implemented will reduce impacts on marine mammal stock to the lowest level practicable. Furthermore, additional aerial monitoring measure for Cook Inlet beluga whales is added to the requirements for seismic operations by CPAI near Beluga River (see Monitoring Section below), which was included in the Final EA. This additional aerial monitoring measure is contained in the IHA issued to CPAI. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not warranted. Subsequently, NMFS finalized the draft EA and issued a FONSI on the proposed project.

Levels and Numbers of Marine Mammals Affected

*Comment 11:* CBD and one private citizen express their concerns that there is a threat of serious injury and mortality to the Cook Inlet beluga whales and other marine mammals from the proposed seismic surveys.

*Response:* As described in detail in a **Federal Register** notice (72 FR 536) published on January 5, 2007, and in the draft EA for the proposed action, NMFS has performed a thorough analysis on the levels of potential impacts to Cook Inlet beluga whales and four other species of marine mammals as a result of seismic operations in the upper Cook Inlet. Based on this analysis, which is supported by the best available scientific information, NMFS has come to the conclusion that only a few beluga whales, Pacific harbor seals, harbor porpoises, Steller sea lions, and killer whales may be taken incidental to seismic surveys, by no more than Level B harassment and that such taking will result in no more than a negligible impact on such species or stocks.

Therefore, NMFS believes that the authorized harassment takes should be at the lowest level practicable due to incorporation of mitigation measures described in the IHA, the EA, and in this document.

No take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of strict monitoring and mitigation requirements conditioned in the IHA. Please refer to the **Federal Register** notice (72 FR 536, January 5, 2007) and the EA for a detailed description of the analysis.

*Comment 12:* The Commission states that the estimated taking of up to 57 beluga whales incidental to the two proposed projects can be characterized as a small number of animals for purposes of making the finding required under the MMPA. However, it represents more than one-quarter of the IUCN's estimate of the number of mature animals in this population (Lowry *et al.*, 2006). Arguably, the Commission states that this level of anticipated taking could have more than a negligible impact on the survival and recovery of the stock. The Commission believes that caution is warranted.

*Response:* NMFS agrees with the Commission that extra caution is needed when authorizing any incidental take permits of Cook Inlet beluga whales, due to the precarious situation of this stock. The IUCN stated that the population of Cook Inlet beluga whale is estimated at 207 mature individuals (Lowry *et al.*, 2006), however, there is no mention of any population surveys the IUCN conducted to reach this number. A Bayesian inference on the population size of Cook Inlet beluga (1994 2005) provided by the IUCN on its website (*http://www.iucnredlist.org/search/details/61442.pdf*) showed that the population estimate of Cook Inlet beluga whales to be over 300 (range: approximately 290 400) whales, above NMFS' estimate of 278 whales, in 2005. In addition, the estimated potential take of up to 57 Cook Inlet beluga whales would include all individuals, and the potential take would be limited to only Level B behavioral harassment. Furthermore, with the implementation of monitoring and mitigation measures discussed in the EA and this document, NMFS believe the actual take by harassment would be much lower. Therefore, NMFS does not believe that the anticipated taking resulted from the proposed activities would have more than a negligible impact on the survival and recover of the Cook Inlet beluga whale stock.

*Comment 13:* CBD is concerned that beluga's foraging behavior and the large tidal fluctuations in Cook Inlet pose high risk of stranding at low tide even in the absence of anthropogenic disturbance.

*Response:* Beluga whale stranding events in upper Cook Inlet are not uncommon. NMFS has reported 804

strandings (both individual and mass strandings) in upper Cook Inlet since 1988 (Vos and Shelden, 2005). Mass stranding events primarily occurred along Turnagain Arm, and often coincided with extreme tidal fluctuations (''spring tides'') and/or killer whale sighting reports (Shelden *et al.*, 2003). These mass stranding events involve both adult and juvenile beluga whales are are apparently healthy, robust animals.

It is uncertain why beluga whales strand in Cook Inlet. Beluga whales are known to intentionally strand themselves during molting, while rubbing their skin against rocky bottoms (NMFS, 2005). Beluga whales may also strand purposely or accidentally to avoid predation by killer whales. Stranded whales, particularly large adults, are at risk of mortality due to stress, hyperthermia and suffocation. During two mass stranding events in 1996 and 1999 involving about 120 whales, 9 adult whales died (Moore *et al.*, 2000). In 2003, 115 beluga whales stranded during five events. Five mortalities occurred during one of these events when 46 animals stranded in Turnagain Arm (Vos and Shelden, 2005). However, NMFS has determined that implementation of mitigation measures described in this document, such as altering vessel direction, power-down or shut-down of airguns when whales are detected to be heading towards the safety zone, carrying out ramp-up procedure when startup airguns, and conducting seismic surveys only during slack tide periods, would prevent such stranding events from occurring.

*Comment 14:* HSUS states that the information provided and the impact analysis for Cook Inlet belugas are not based on the most recent sources. HSUS states that the most recent status review issued by NMFS for Cook Inlet beluga (Hobbs *et al.*, 2006) updates, and dramatically expands on, information from the stock assessment. HSUS states that only the most recent information should be used when considering the status, distribution and effects on the stock.

*Response:* NMFS agrees with the HSUS that the most recent information should be used when considering the status, distribution, and effects of the stock. NMFS has updated the EA for this action with new stock assessment data based on the most recent aerial surveys conducted by NMFS National Marine Mammal Laboratory in the 2006 season. The revised data updates the Cook Inlet beluga whale population at 302 whales (NMFS, unpublished data) from the previous 278 whales assessed in 2005. However, NMFS does not agree with the HSUS that the Status Review updates, and dramatically expands on, information from the stock assessment. As stated in its Executive Summary, the Status Review ''provides a summary of the best available science to aid NMFS policy makers'' in determining that the listing action may be warranted, and therefore is consistent with NMFS *Draft Conservation Plan for the Cook Inlet Beluga Whale (Delphinapterus leucas)* (draft Conservation Plan, NMFS, 2005a).

*Comment 15:* HSUS, citing Hobbs, states that the range of beluga whales has contracted considerably to focus during spring and summer around river mouths in upper Cook Inlet, in the general area where the seismic projects are proposed. HSUS states that the contracted smaller ranges are very important habitat to a vulnerable population. HSUS is concerned that the mitigation measures of ramping would displace beluga whales and force them to utilize suboptimal habitat.

*Response:* In the Status Review (Hobbs *et al.*, 2006) the statement regarding the diminishing of the beluga whale's ranges provides the following description:

''In the 1970s and 1980s, beluga sightings occurred across much of the northern and central parts of Cook Inlet (Calkins 1984), but in the 1990s the summer distribution diminished to only the northernmost portion of Cook Inlet (Rugh *et al.*, 2000).''

The Status Review and the draft Conservation Plan, as supported by NMFS long-term beluga whale surveys in Cook Inlet, showed that whales do not just congregate around any river mouth in upper Cook Inlet. The Status Review states that from late spring and throughout the summer months, the majority of beluga probably feed on fish species that are abundant in the Susitna River system and adjacent intertidal mudflats. The proposed project area for CPAI, as described in detail in the **Federal Register** notice (72 FR 536, January 5, 2007), is paralleling the shoreline from just offshore of the Beluga River south for about 6 km, which is about 15 miles south of Susitna River mouth. This area is in the extreme southern edge of the area classified by NMFS as Type 2 habitat (high value, summer feeding area) in its draft Conservation Plan. Since the proposed CPAI seismic operations will be completed by May 15, NMFS does not believe that this project would have significant impact to beluga foraging activities. However to ensure that CPAI survey does not have a significant impact, NMFS is requiring CPAI to conduct an aerial monitoring program (see Monitoring Section). As for the proposed UOCC seismic project, which would occur further south in a latter period (from May 15 June 15) when the majority of Cook Inlet belugas will be feeding around the Susitna River, Knik Arm, and Tumagain Arm areas (Rugh *et al.*, 2000), no aerial monitoring is required. Therefore, it is not likely that the proposed seismic operations and the mitigation measures will displace beluga whales from their prime feeding ground or force them to utilize suboptimal habitat. Please refer to the draft Conservation Plan and the EA for a detailed description of beluga whales' temporal and spatial distribution in Cook Inlet.

*Comment 16:* HSUS is concerned that displacing animals for up to 8 hours each day (1 2 hours during each of 3 4 daily slack tides) for a period of months could have significant effects on foraging success and thus fitness of individuals in this declining population. HSUS notes that disturbance resulting in displacement by beluga whales does not appear to have been considered in the draft EA. HSUS also states that displacement even from a small area, if that area is important habitat, could have serious long term impacts on Cook Inlet beluga. In addition, citing Morton and Symonds (2002), HSUS states that killer whales and harbor porpoises have been displaced from important habitat by seal scrammers, a sound source similar to airguns.

*Response:* NMFS disagree. Regarding the potential concern of displacing animals for up to 8 hours each day for the three-month period, since the survey vessel will be moving as it is conducting seismic surveys, NMFS does not believe that the whales will be displaced from a particular location during the entire period. The most likely scenario is that as the survey vessel conducts the surveys, marine mammals including beluga whales will be temporarily displaced from an approximately 370 m (1,214 ft) radius zone of influence (ZOI). As the vessel moves around, the ZOI will be shifting constantly. Therefore, no animal is expected to be displaced from an area for longer than 1 2 hours. NMFS considers temporary (rather than long-term) displacement of marine mammals as a form of behavior avoidance and is discussed in the draft EA (page 28). Please refer to the EA, Cook Inlet Beluga Conservation Plan, and *Response* to *Comment 15* for additional information on beluga whale habitat.

Regarding Morton and Symonds's (2002), HSUS incorrectly stated that acoustic harassment devices (AHDs) and

airguns were similar in acoustic features. The sound produced by an AHD is intermittent but is considered non-pulse, based on differences in measurements between continuous and impulses sound level meters (Harris, 1998). In addition, the 10–kHz Airmar AHD mentioned in Morton and Symond's (2002) was designed specifically to cause physical pain to seals, and the nature of killer-whale hearing (similar to most odontocetes including belugas) makes this species vulnerable to impact by this type of sound source as well. As a result, NMFS believes that the AHD which was used from 1993 to 1999, is not be comparable to seismic airguns as proposed to be used during the three-month long seismic surveys proposed in Cook Inlet.

*Comment 17:* Citing NMFS Stock Assessment Reports (SARs), HSUS points out that the Gulf of Alaska harbor seals should not be treated as a single stock.

*Response:* Whether the Gulf of Alaska harbor seals should be reclassified into more finely scaled stocks remains under study. Until NMFS officially has adopted the revised stock reclassification based on available scientific information, NMFS will continue to use the existing stock information with the latest population abundance assessment for management purposes under the MMPA. In addition, even if the Cook Inlet harbor seals were to be reclassified as a separate stock, NMFS does not believe that the proposed seismic project would have significant impact to these animals due to the rare occurrence of the harbor seals within the project area. The most recent count for harbor seals within Cook Inlet is 7,330 seals (Josh London, National Marine Mammal Laboratory. Pers. Comm. February 2007). NMFS calculated that up to 30 Pacific harbor could be taken by Level B behavioral harassment as a result of the seismic projects. Therefore, the estimated take as a result of the proposed projects would represent 0.4 percent of the total seals in Cook Inlet.

*Comment 18:* HSUS points out that the Gulf of Alaska harbor porpoise stock was recently revised from ''not strategic'' to ''strategic'' due to poor and/or outdated abundance estimates.

*Response:* NMFS updated the information on Gulf of Alaska stock of harbor porpoise in the EA, based on the newly released draft Stock Assessment Report. The classification of the Gulf of Alaska harbor porpoises to a strategic stock is largely due to lack of information on incidental harbor porpoise mortality in commercial fisheries. The population estimate for this stock has been revised from 30,506 to 41,854 porpoises. Therefore, the percentage of estimated take of the Gulf of Alaska harbor porpoise by seismic surveys has been revised from 0.02 percent to 0.01 percent.

*Comment 19:* HSUS is concerned that information on harbor porpoise densities in Cook Inlet was based on surveys done in 1991 1993, therefore, the abundance data would not be accurate. HSUS further states that harbor porpoises are not evenly distributed but ''tend to clump in areas where forage conditions are more ideal, making them more vulnerable to anthropogenic impacts in some areas than others.'' Citing Rugh (2005), HSUS states that there were high densities of harbor porpoises in two different areas in Cook Inlet.

*Response:* NMFS acknowledges that the survey studies on population densities of Cook Inlet harbor porpoises cited (Dalheim *et al.*, 2002) were conducted 14 years ago, however, there is no evidence that these data are not accurate. A reference search did not show that there are any better or more recent studies available. Therefore, NMFS considers that Dalheim *et al.*'s (2002) research on population densities of Cook Inlet harbor porpoises is the best scientific information available thus far.

The statement ''that harbor porpoises tend to clump in areas where forage conditions are more ideal, making them more vulnerable to anthropogenic impacts in some areas than others'' is not totally relevant since the proposed seismic surveys do not necessarily seek areas where forage conditions are good for marine mammals. Even if the areas were the same, marine mammals clustered in groups would offer a better opportunity to see them and implement appropriate mitigation.

NMFS assumes that the citation HSUS mentioned is Rugh *et al.* (2005), *NOAA Technical Memorandum NMFS-AFSC–149: Aerial Surveys of Belugas in Cook Inlet, Alaska, June 2001, 2002, 2003, and 2004.* In this paper, Rugh *et al.* stated that twice they located high density areas for harbor porpoises: south of Tuxedni Bay in 1994 and south of Chinitna Bay in 2004. Both areas are located in lower Cook Inlet, which are not the proposed project area. This statement supports NMFS assessment in its EA that harbor porpoises tend to concentrate in lower Cook Inlet.

*Comment 20:* Citing NMFS' draft EA that there is no abundance estimate of Steller sea lions and killer whales in the proposed project area, HSUS and the AWI state that this does not preclude the occurrence of Steller sea lion within the project area and the analysis in the EA is inadequate. HSUS further questions NMFS regarding source references that Steller sea lions seldom occur in upper Cook Inlet besides data from aerial surveys conducted in June and July.

*Response:* First, one should not interpret the statement in the draft EA that no population estimate has been made for Steller sea lions and killer whales within the proposed project area as that NMFS has no knowledge whether these species occur in the area or not. Repeated aerial surveys by NMFS for Cook Inlet beluga whales have recorded any sighting of other marine mammals including Steller sea lions and killer whales, however, no efforts were made to calculate the abundance of these species due to their rare occurrence in the project area (Rugh *et al.*, 2005). In fact, Rugh *et al.* (2005) documented every sighting of marine mammals in their beluga whale aerial survey report. Although systematic surveys for beluga whales are usually conducted in June and July, field observations were made by biologists in NMFS Anchorage Office throughout the year on marine mammals within Cook Inlet. All these observations point out that Steller sea lions are rare in upper Cook Inlet (Brad Smith, NMFS Anchorage Office. Pers. Comm. February 2007).

*Acoustic Impacts*

*Comment 21:* CBD, the AWI and the WDCS question NMFS assumption that belugas would not be harassed by seismic sounds below 160 dB re: 1 microPa. CBD states that there are numerous studies showing significant behavioral impacts from received sounds well below 160 dB. For example, in its recent decision document related to seismic surveys associated with oil and gas exploration in the Chukchi Sea, NMFS imposed a 120–dB safety zone for aggregations of bowhead whales based on its finding that ''bowhead whales apparently show some avoidance in areas of seismic sounds at levels lower than 120 dB'' (MMS, 2006). Also harbor porpoises have been reported to avoid a broad range of sounds low-frequency (airgun pulses), mid-frequency (sonar transmissions), and high-frequency (acoustic harassment devices) at very low sound pressure levels (between 100 and 140 dB re: 1 microPa) (Kastelein *et al.*, 2000; Olesiuk *et al.*, 2002; Calambokidis *et al.*, 1998; NMFS, 2005b). AWI states that whales have stranded and died after being exposed to lower levels of sound, notably in the Bahamas incident of 2001.

*Response:* NMFS does not agree. As stated in the **Federal Register** (72 FR 536, January 5, 2007) and the EA, one of the most important aspects to assess the effects of high intensity sounds on marine mammals is to understand their hearing sensitivity. For most small- and medium-sized odontocetes (beluga whales included), the most sensitive hearing ranges fall between 1 and 100 kHz (Richardson *et al.*, 1995). Although it has been reported that beluga whale's hearing extends to as low as 40 75 Hz (Awbrey *et al.*, 1988; Johnson *et al.*, 1989), its hearing threshold is at about 130 140 dB re: 1 microPa (Richardson *et al.*, 1995). The dominant frequencies (i.e., frequencies with highest sound pressure levels) of the airguns to be used in the proposed seismic operations are in the extreme low end of the spectrum (around 20 Hz). NMFS believes that at these low frequency ranges, the ability for belugas to detect sound is greatly reduced, therefore, belugas are not likely to be harassed.

While bowhead whales may be affected by seismic sounds above 120 dB re: 1 microPa, they are mostly found within the Arctic, do not occur in Cook Inlet and therefore will not be affected. Other mysticete species are not expected in upper Cook Inlet. The harbor porpoise examples given in the comments were exposed to acoustic signals with much higher frequencies than the acoustic signals being produced by the proposed project (150 3,500 Hz). For example, the experiment conducted by Kastelein *et al.* (2000) used three types of sounds, all had harmonics with high sound pressure levels above the range of 11 to 30 kHz. Gordon *et al.* (1998) reported on experimental playbacks to harbor porpoises in inshore waters around Orkney, United Kingdom using a small source air gun (source level 228 dB re: 1 microPa zero-to-peak at 1 m) and observed no changes in the rate of acoustic detection as a result of sound exposure. In general, it is well known that harbor porpoises' hearing sensitivity drops sharply as frequency goes under 8,000 Hz (Andersen, 1970; Kastelein *et al.*, 2002).

In addition, it is also important to understand that whether a marine mammal would be harassed by sound or not also depends on the context of the animal's behavior and the acoustical property of the sound signal. It is also very possible that whales may not be harassed when exposed to sound at received levels higher than 160 dB re: 1 microPa (e.g., Madsen and Mohl, 2000; Harris *et al.*, 2001). Furthermore, as discussed in the EA, the upper Cook Inlet is one of the most industrialized and urbanized regions of Alaska. As such, ambient noise levels are high and range from 100 120 dB re: 1 microPa (Blackwell and Greene, Jr., 2002). Therefore, it is likely that marine mammals in this region are habituated to these anthropogenic sounds.

NMFS does not concur with the AWI that there was a whale stranding event in the Bahamas in 2001 caused by exposure to sound levels under 160 dB re: 1 microPa, as mentioned in its comment (no reference provided). There was a mass stranding event in the Bahamas on March 15 16, 2000, which is possibly linked to naval exercises in the area (Cox *et al.*, 2006). Although no received levels and mechanism that caused the stranding were determined, it was revealed that four of five ships were using mid-frequency sonar (AN/SQS–53C: 2.6 3.3 kHz, approximately 235 dB re: 1 microPa SPL, AN/SQS–56: 6.8, 7.5, and 8.2 kHz, approximately 223 dB re: 1 microPa SPL; Anon, 2001). These sounds are very different from the seismic pulses in terms of frequencies, amplitudes, and temporal patterns.

*Comment 22:* Citing a recently issued IHA by NMFS to the National Science Foundation for conducting seismic surveys, CBD is concerned that beluga whales could be displaced at a significant distance (up to 20 km, or 12.4 mi) from a sound source.

*Response:* NMFS notes that there have been observations that small toothed whales sometimes move away, or maintain a somewhat greater distance from the seismic vessel, when a large array of airguns is operating than when it is silent (e.g., Calambokidis and Osmek, 1998; Stone, 2003). Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10 20 km (16 – 32 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 10–20 km (Miller *et al.*, 2005). However, as noted in the **Federal Register** notice referenced by the CBD (71 FR 43450, August 1, 2006), NMFS does not consider minor movements away from an acoustic source to rise to Level B harassment, since at the range of 7,097 and 10,646 m (4.4–6.6 mi; depending on ocean depths), received levels dropped down to below 160 dB re: 1 microPa.

*Comment 23:* The WDCS states the possibility that up to 57 Cook Inlet beluga whales (up to 20 percent of the population) could be subjected to 180– dB received level is unacceptable. Given the most recent research survey, providing a population abundance estimate of only 278 animals, it would be unacceptable for even one animal to be subjected to the received levels proposed during the seismic surveys.

*Response:* NMFS does not think the WDCS statement is accurate. Based on NMFS' calculation, as discussed in the draft EA, no Cook Inlet beluga whales would be subjected to noise levels equal to or greater than 180 dB re: 1 microPa (rms) from the proposed seismic surveys. Based on NMFS' acoustic criteria, 180 dB re: 1 microPa (rms) is considered to be the onset of TTS and exposure of cetaceans to this level of noise will not be permitted under these IHAs. Strict mitigation and monitoring measures described in the EA and required under these IHAs will prevent any cetaceans from exposure to 180 dB re: 1 microPa (rms) or greater.

NMFS states that up to 57 beluga whales (representing 19 percent of the population based on the most recent survey data) could be exposed to noise levels of 160 dB re: 1 microPa (rms), which is the onset of Level B behavioral harassment, as a result of the seismic operations.

*Comment 24:* CBD questions NMFS' Level A harassment criteria of 180 dB re: 1 microPa for cetacean and 190 dB re: 1 microPa for pinniped species. CBD cites that in 2002, 2 Cuvier's beaked whales (*Ziphius cavirostris*) were found to have stranded in the Gulf of California, Mexico, coincident with geophysical surveys that were being conducted in the area (Hildebrand, 2004), and in the same year, humpback whales (*Megaptera novaeangliae*) were reported to have stranded in unusually high numbers along Brazil's Abrolhos Banks, where oil-and-gas surveys were being conducted (Engel *et al.*, 2004). In addition, CBD states that the western Pacific gray whales were displaced from feeding grounds and exhibited behavioral changes in response to seismic surveys off Russia's Sakhalin Island (Wursig *et al.*, 1999). CBD also states that no studies undertaken on the acoustic sensitivity of pinnipeds suggests these species are at lower risk of threshold shift or auditory injury than cetaceans (Kastak *et al.*, 1999; 2005), and that harbor seals have exhibited low discomfort thresholds to anthropogenic noise (Kastelein *et al.*, 2006).

*Response:* In 1998, scientists convened at the High Energy Seismic Sound (HESS) Workshop, reviewed the available scientific information, and agreed on the received sound levels above which marine mammals might incur permanent tissue damage resulting in a permanent threshold shift (PTS) of hearing. Shortly thereafter, a

NMFS panel of bioacousticians used the information gathered at the HESS workshop to establish the current Level A Harassment acoustic criteria for non-explosive sounds, 180 dB re: 1 microPa-m (rms) for cetaceans, and 190 dB re: 1 microPa-m (rms) for pinnipeds, exposed to impulsive sounds. In the absence of good sound scientific information for specific species, NMFS conservatively adopt these criteria to establish safety zones, within which monitoring or mitigation measures must be applied, for all cetacean and pinniped species.

A study by Finneran *et al.* (2002) on bottlenose dolphin (*Tursiops truncatus*) and beluga whale using a behavioral response paradigm and exposing them to intense impulses from a seismic watergun showed that masking temporary threshold shifts (MTTS) occurred after being exposed to an impulsive sound of 160 kPa, or 226 dB re: 1 microPa p-p, with total energy fluxes of 186 dB re: 1 microPa2–s for the beluga whale. No MTTS was observed in the dolphin at the highest exposure conditions: 207 kPa, 228 dB re: 1 microPa p-p, and 188 dB re: 1 microPa2–s total energy flux.

As for these two stranding examples cited in the comment (Hildebrand, 2004; Engel *et al.*, 2004) that occurred in the vicinity where there had been seismic surveys conducted using powerful airguns, a causation relationship between seismic surveys and strandings has yet to be scientifically established. These references did not state that seismic surveys are the cause of the strandings. Please see NMFS more detailed response to these two events in the previous notice (69 FR 74906, December 16, 2004). NMFS notes that no measurements were made on the distance between the acoustic source and the marine mammals. The report by Wursig *et al.* (1999), which is also cited in the comment, provided a detailed study of behavioral ecology of western Pacific gray whale summering off Sakhalin Island. The report did not suggest that the species were displaced from important feeding ground. On the contrary, a follow up final report (Wursig *et al.*, 2000) on the same subject stated that ''whales did not appear to be displaced by industrial activity.''

No comparable studies have been conducted on pinnipeds regarding their responses to impulsive sounds. The two references (Kastak *et al.*, 1999; 2005) cited in the comment cannot be used to address the noise responses of pinnipeds for the proposed project because animals in these studies were exposed to octave-band noises for extended durations (20 22 minutes in Kastka *et al.*, 1999; 20, 25, and 50 minutes in Kastka *et al.*, 2005). In the third reference (Kastelein *et al.*, 2006) cited in the comment, harbor seals were also exposed to octave-band noise, nonetheless, no TTS was observed. All these studies underscore the importance of including sound exposure metrics (incorporating sound pressure level and exposure duration) in order to fully assess the effects of noise on marine mammal hearing, not just looking at the absolute sound pressure levels.

*Comment 25:* HSUS uses an example that workers in loud factories become habituated to noise in order to make money to feed their families, but that does not insulate them from the multiplicity of effects of stress or chronic sub-lethal conditions that may go undetected by external monitoring, therefore, the habituation to high level acoustic disturbance cannot be dismissed.

*Response:* NMFS does not believe that the HSUS' example of workers working in noisy factories is a good analogue to marine mammals living in a noisy environment due to the different contexts. In addition, such comparison cannot be performed as HSUS did not provide quantitative data on the noise levels of the ''loud factories'' that are presumed to cause stress or chronic sub-lethal condition.

The marine environment is an efficient medium for sound propagation and the ambient noise, as shown in many studies, are much higher underwater than in air, although quantitative comparison is often impossible due to different reference point in acoustic pressures selected. Many of the sounds (e.g., those from marine life, wind, surf, waves, rain, bubbles, ice, earthquakes, and thunder/lightning) underwater occur naturally and are considered an intrinsic property of the environment (Wenz, 1962; Diachok and Winokur, 1974; Arnold *et al.*, 1984; Wilson *et al.*, 1984; Nystuen and Farmer, 1987; Richardson *et al.*, 1995; Tkalich and Chan, 2002; Ma *et al.*, 2005). Therefore, marine mammal hearing sensitivities may not reflect those of terrestrial animals. Furthermore, the proposed seismic surveys would occur in a short period of three months and are not confined in one fixed spot, while the factory workers in HSUS' example are presumed to be working in the same noisy environment for a number of years.

*Comment 26:* HSUS states that when describing the characteristics of seismic sound, NMFS did not cite the most recent literature except Richardson *et al.* (1995), *Marine Mammal and Noise (Academic Press)*, which HSUS considers to be outdated. HSUS brings NMFS attention to a recent paper by Madsen *et al.* (2006) indicating that seismic airguns generate significant sound energy at frequencies well above those of interest to the surveyors. Citing Madsen *et al.* (2006), HSUS states that received levels of up to 147 dB re: 1 microPa rms were generated for higher frequencies, which may cause avoidance, stress, and masking to marine mammals.

*Response:* NMFS disagrees. NMFS does not consider Richardson *et al.*'s (1995) work as outdated. To the contrary, it is still one of the most authoritative and widely cited literatures on characteristics of seismic sound and airguns. In fact, Richardson *et al.* (1995) has noted that low frequency airgun pulses contain energy in much higher frequencies, which was also cited in our draft EA. NMFS is aware of Madsen *et al.*'s work and considers it an important contribution to our understanding of seismic sounds propagation in deep water.

In addition, NMFS does not believe that received levels from inpulse noise (sound as seismic) of up to 147 dB re: 1 microPa rms would cause a biologically significant response by marine mammal species and stocks in Cook Inlet (see *Response* to *Comment 21*). However, in recognition of the potential of horizontal propagation of sound energy at higher frequencies, NMFS requires that safety zones based on 180 dB and 190 dB re: 1 microPa rms isopleths around the survey vessel be established for cetacean and pinniped species, respectively at the distance of greatest propagation. Please refer to the EA and **Federal Register** notice (72 FR 536, January 5, 2007) for detailed information.

*Comment 27:* HSUS states that NMFS did not consider some of the more recent work examining the impacts of seismic airguns on marine mammals. HSUS brings NMFS attention to the proceedings from a workshop on this issue by the International Whaling Commission (IWC) Scientific Committee's Standing Working Group on Environmental Concerns. In addition, HSUS states that very outdated sources (primarily from the 1990s) of empirical work on the impact of seismic airguns on marine mammals were cited in the draft EA.

Responses: NMFS is aware of the proceeding by the 2006 IWC Scientific Committee's Standing Working Group on Environmental Concerns and has reviewed all its session papers on impacts of seismic surveys on cetaceans. These papers and the proceeding were not considered in the EA because none

of the session papers were peer-reviewed, and many are summaries of original studies that were already included in the EA. Nonetheless, a few of the new studies presented at the IWC did provide information on long-range effects of airgun noise on marine mammals. For example, field monitoring of seismic surveys by U.S. Geological Survey (USGS) in Juan de Fuca Strait, Georgia Strait, Puget Sound, Hood Canal, and other marine waters in British Columbia and Washington showed that most marine mammals exhibited avoidance and Level B behavioral change when exposed at 170 183 dB re: 1 microPa rms but were not affected when levels were below 170 dB, except for harbor porpoises (Bain and Williams, 2006). Although the authors stated that there were insufficient numbers of individuals of marine mammals observed to merit statistical analysis, the general observations support NMFS 160–dB criteria for the onset of Level B behavioral harassment.

As regards to the sources used in the draft EA, NMFS does not considered them outdated. All references NMFS used are peer-reviewed and are cited in peer-reviewed papers. All these papers were tested in time and thus NMFS considers them to be the best available scientific information. A quick tally showed that among the 21 references cited on noise impacts on marine mammals, 3 (14 percent) were published in the 1980s, 8 (38 percent) in the 1990s, and 10 (48 percent) in the 2000s.

*Comment 28:* HSUS states that the fact that cetaceans are near vessels during airgun firing, even riding the bows of vessels towing arrays is more a reflection of the characteristics of airgun sound propagation than an indication that airgun pulses do not affect cetaceans. HSUS states that there may well be sound shadows closer to the vessel and the animals may be attracted to the vessels in an effort to escape exposure to the blast.

*Response:* The Lloyd-mirror effect phenomenon, where acoustic energy is diminished in a sound field near the surface where engine and propeller noise from a ship is blocked by the vessel's hull, has been a discussion regarding ship strike of large whales (Terhune and Verboom, 1999; Blue *et al.*, 2001). However, it is highly unlikely that the received levels would be reduced to the degree from the source (airgun array) with no blockage between the source and the receivers. Nonetheless, the IHAs require the surveyors to shut down the airgun as soon as a marine mammal is sighted or believed to be inside the safety zones, and no airgun can be started until 30 minutes after all marine mammals have vacated the safety zones.

*Comment 29:* HSUS states that beluga whales react to low frequency sounds from icebreaker ships, probably at the level at which they are just able to detect them, up to 40 km away (Finley *et al.*, 1990; Cosens and Dueck, 1993). HSUS questions NMFS' assumption that beluga whales do not react to low frequency sounds.

*Response:* NMFS does not agree with HSUS' extrapolation of beluga reactions to approaching icebreaker ship sounds to predict their responses to low-frequency seismic surveys. First, the acoustic characteristics of an icebreaker do not resemble those from a seismic airgun array. While seismic airguns produce transient sounds (pulses), the noise from a ship is continuous sounds (non-pulses) (Richardson *et al.*, 1995). In addition, HSUS incorrectly classified sounds from icebreaker ships as ''low-frequency.'' In fact, mid-point frequencies of intense sound levels (over 162 dB re: 1 microPa) from icebreaker ships recorded ranged from 50.1 Hz 5.01 kHz (Cosens and Dueck, 1993). In a more recent study, the statistical source spectrum levels in 12th octave bands between 100 Hz and 20 kHz from the Canadian Coast Guard icebreaker *Henry Larse*n, were calculated at a median source level of 192 dB re: 1 microPa @ 1 m from bubbler system noise and 197 dB re: 1 microPa @ 1 m for noise associated with propeller cavitation along this entire frequency range (Erbe and Farmer, 2000). Therefore, their effects of noises from icebreaking ships and seismic airguns to marine mammals cannot be compared. Furthermore, the contexts of the acoustic signals and the prior exposure of anthropogenic sounds by the whales need also to be taken into consideration when interpreting animal responses. As suggested in both publications cited by HSUS (Finley *et al.*, 1990; Cosens and Dueck, 1993), the beluga whale reactions to icebreaker noise at unprecedented ranges in the remote Canada High Arctic was probably due to the fact that these animals are relatively naive with respect to exposure to industrial noise. Richardson *et al.* (1995) also suggested that the acute responsiveness to icebreakers was probably caused by the partial confinement of whales by heavy ice, scarcity of ships in the high arctic in spring, and ideal sound propagation conditions (LGL and Greeneridge, 1986).

*Comment 30:* HSUS states that there is an overemphasis on avoidance behavior and hearing loss when discussing the potential impacts of the seismic surveys on marine mammals in Cook Inlet in NMFS' draft EA. Citing the IWC *Report of the Standing Working Group on Environmental Concerns* (2006), HSUS states that ''Clark and his colleagues...suggest strongly that masking may be a significant problem for animals exposed to seismic airguns,'' but it was not mentioned in the draft EA.

*Response:* NMFS considers that long-term displacement and hearing loss as a result of anthropogenic sounds are biologically significant impacts to marine mammals, as discussed in detail in the draft EA. Therefore, NMFS considers it better to overemphasize and to call extra attention to the reviewers and the public regarding the danger of these impacts, than to have these issues overlooked. However, NMFS does not believe beluga whale or other marine mammal acoustic communications would be masked as a result from the seismic surveys. For the most part, the low-frequency and intermittent seismic pulses, the high-frequency communication calls of five species of marine mammals in Cook Inlet, and the broadband echolocation signals from three cetacean species do not overlap in either frequency or temporal domain. And the non-sequential, high-frequency nature of cetacean communication signals (whistles and pulsed calls) can be easily transmitted in between the brief seismic pulses.

The IWC report (IWC, 2006) did not state or even suggest that masking is a potential problem for marine mammals exposed to seismic sounds. In fact, the only places ''masking'' is mentioned in that report is when discussing noises from pile-driving, windfarms, and high ambient noise environments. Clark and Gagnon (2006), in their session paper presented at the 2006 IWC meeting, do not suggest that masking is a problem for marine mammals exposed to seismic sounds. In fact, ''masking'' or ''mask'' was not mentioned in their paper (Clark and Gagnon, 2006). This particular paper does state that highly sequential and patterned low-frequency, narrowband mysticete songs often coincide with the same acoustic features of seismic sounds. The paper also provided examples showing acoustic maps for the 20 22 Hz frequency band, where analyses indicate that fin whales would stop singing when a seismic survey was operating but would resume singing within hours to days after the survey stopped. NMFS does not think this would be the case in Cook Inlet since there are no mysticeti species present.

*Comment 31:* The AWI and HSUS are concerned about seismic sound on fish species and state that several recent studies demonstrating hearing loss and widespread behavioral disruption in commercial species of fish (Engas *et al.*, 1996; Popper *et al.*, 2003). HSUS further states that the discussion of sound effects on fish seemed brief and sketchy. HSUS suggests that the draft EA expands its discussion of the impacts of seismic on other marine life. HSUS also points that some studies cited in the draft EA suggest very strongly that marine mammal prey might be negatively impacted by seismic surveys, either because they are significantly displaced (e.g., Slotte *et al.*, 2004) or because they are physically injured (e.g., McCauley *et al.*, 2003).

*Response:* The purpose of the EA is to evaluate environmental impacts of issuing the two IHAs for incidental taking of marine mammals by harassment will: (1) have a negligible impact on the marine mammal species or stocks; and (2) not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. However, throughout the EA, NMFS provided a basic analysis on potential seismic surveys impacts on marine environment, including fish species. The analysis indicates that it is highly unlikely the marine environment, including other marine species, would be significantly impacted as a result of the proposed seismic surveys. Therefore, a more in depth discussion on the effects of seismic surveys on other marine life is beyond the scope of the EA.

The research conducted by Slotte *et al.* (2004) during the seismic investigations off the Norwegian west coast, as cited in HSUS' comment, did not find that pelagic fish (herring, blue whiting and mesopelagic species) were displaced. This particular research recorded the acoustic abundance of fish during the seismic surveys, and compared it with data recorded directly prior to and after shooting along the seismic transects. The comparison showed that although lower acoustic abundance of fish was recorded during the shooting, there was not a difference in fish abundance prior to and after shooting within the seismic area. The authors state that these results indicate ''that the shooting had insignificant short-term scaring effects.'' In addition, the authors state that ''both blue whiting and mesopelagic species were found in deeper waters in periods with shooting compared to periods without shooting, indicating that vertical movement rather than horizontal movement could be a short-term reaction to this noise.'' The word ''displacement'' or ''displace'' did not appear in the paper.

The experiments by McCauley *et al.* (2003), as cited in the comment, were conducted by carrying out trials where pink snapper (Pagrus auratus) were held in cages and were exposed to signals from an airgun towed toward and away from the cages. The airgun, which has a source level of 222.6 dB re: 1 microPa p-p (or 203.6 dB re: 1 microPa rms) at 1 m, was towed from start up at 400 – 800 m (1,312 – 2,615 ft) away to 5 – 15 m (16 – 49 ft) at closest approach to the cage. The study showed that the ears of fish exposed to an operating air-gun sustained extensive damage to their sensory epithelia that was apparent as ablated hair cells. However, the authors cautioned that several caveats must be considered when interpreting these results. Foremost of these caveats was that the fish studied were caged and could not swim away from the sound source. Video monitoring of behavior suggested that the fish would have fled the sound source if possible. It is also likely that many fish species hearing the approaching air-gun would swim away, as has been observed on a large scale by Engas *et al.* (1996).

*Comment 32:* HSUS states that NMFS' draft EA overemphasizes TTS and serious injury, as well as behavioral harassment, but ignores the potential for increased stress, displacement to sub-optimal habitat (even if only temporarily), and masking. The AWI, WDCS, and HSUS state that the proposed mitigation measures are inadequate and will not necessarily protect the marine mammals in the project area.

*Response:* NMFS believes that the proposed mitigation measures will protect marine mammals from Level A harassment and TTS (Level B harassment), as described in detail in the EA. These are standard mitigation measures widely used for seismic operations and are statutorily required in many countries (JNCC, 2004; Weir *et al.*, 2006; Wilson *et al.*, 2006). Regarding the comments on potential increased stress, displacement to sub-optimal habitat, and masking of marine mammals, please refer to *Responses* to *Comments 25*, *15*, and *30*, respectively.

*Comment 33:* HSUS states that the TTS data used in the draft EA are primarily based on studies conducted on captive animals that have been habituated to research protocols and a noisy environment (San Diego Harbor). These TTS values have never been validated on free-ranging naive animals, which at best might be more sensitive behaviorally than captive animals and at worst might also be more susceptible to hearing damage at lower received levels.

*Response:* It is true that three of the six studies on marine mammal TTS cited in the draft EA were based on research conducted on animals in San Diego Bay, however, recent studies on the same animals, which was also cited in the EA, indicated that masking noise did not have a substantial effect on the onset-TTS levels observed (Finneran *et al.*, 2005). These data represent the best scientific information available to date. In addition, those TTS data were not used by NMFS as criteria for onset of TTS. The criterion used by NMFS for onset-TTS is 180 dB re: 1 microPa for cetaceans, which is much lower than levels reported in these studies.

Regarding the validation of TTS values on free-ranging naive animals, as noted in the HSUS comments, NMFS is not aware of any such studies being conducted or other data existing, either within or outside the United States.

*Comment 34:* AWI states that anthropogenic noise does not just affect hearing organs, and that the hearing range of the Cook Inlet belugas has not been assessed. AWI further states that presumably the data used is from a few captive individuals, likely habituated to noise over a length of time.

*Response:* NMFS agrees that anthropogenic noise does not just affect hearing organs of marine mammals. For a detailed discussion on the effects of anthropogenic noise on marine mammals, please refer to the EA. Hearing sensitivity of beluga whales is well documented (White *et al.*, 1978; Awbrey *et al.*, 1988; Johnson *et al.*, 1989), and multiple studies on beluga whales' behavioral audiograms from different researchers largely agree with each other. Therefore, in view of the scientific methods, there is no reason to believe that Cook Inlet beluga whales would have significantly different hearing range than the same species from different areas. In addition, habituation to noise does not affect animal's hearing sensitivity, especially in the experimental setting, where animals are rewarded to ''hear better.''

*Monitoring and Mitigation*

*Comment 35:* CBD questions whether NMFS has taken the ''means effecting the least practicable impact'' on marine mammals when implementing mitigation measures. CBD argues that the mitigation requirement that the taking have the ''least practicable impact'' on the species requires NMFS to consider a larger safety zone.

*Response:* NMFS disagrees. It may seem that a large safety zone would be a more conservative mitigation measure

to ensure that marine mammals are not exposed to intense seismic sound pressure levels. However, a larger safety zone often presents more challenges in monitoring, and would compromise the effectiveness of spotting marine mammals within or approaching the safety zones. In addition, as mentioned in *Response* to *Comment 22*, and discussed in detail in the **Federal Register** notice (72 FR 536, January 5, 2007) and in the EA, carefully modeled and empirically field-verified safety zones based on isopleths of 180 dB re: 1 microPa for cetaceans and 190 dB re: 1 microPa for pinnipeds are one of the most conservative mitigation measures which allows the least practicable impact on the species for this proposed action.

*Comment 36:* CBD states that the proposed requirements related to monitoring of the safety zone for the proposed actions do not meet the MMPA's standards because, for example, there is no requirement for passive acoustic monitoring (PAM). The WDCS also recommends that PAM be undertaken to enable an additional opportunity to detect marine mammals in the survey area.

*Response:* NMFS disagrees. The MMPA has not established standards for monitoring requirements. The monitoring requirements proposed are to ensure that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Monitoring measures are also used to reduce the level of takes to the lowest level practicable due to implementation of the mitigation measures.

Monitoring measures for different project are proposed in a case-by-case basis, and there is no ''one size fits all'' type of monitoring procedures. For the proposed seismic projects in upper Cook Inlet, the radius of the safety zone (370 m, or 1,214 ft) based on the 180 db re: 1 microPa isopleths is too small to allow accurate and effective acoustic monitoring. As the Joint Nature Conservation Committee (JNCC, 2004) stated that in practice the exclusion zone (safety zone) need be more than 500 m (1,640 ft) to allow for accurate passive acoustic monitoring (PAM). JNCC also noted that in many cases PAM is not as accurate as visual observation when determining range. NMFS believes that in the subject seismic survey projects, where safety zone is sufficient small, passive acoustic monitoring is not warranted. The presence of additional vessels for deploying PAM would only introduce more noise to the small area where the proposed projects are to occur.

However, as an additional monitoring measure, NMFS requires CPAI to conduct aerial monitoring for its seismic surveys off Beluga River in upper Cook Inlet. A detailed aerial monitoring plan is provided in the Monitoring Section of this document.

*Comment 37:* The WDCS recommends that at least three marine mammal observers (MMOs) should be available so that two visual observers are on watch at all times during the survey. The Commission expresses its concern that operations at night or under foggy condition may not provide sufficient measure to protect marine mammals. The WDCS recommends that no operations should take place at night or in sea conditions above a sea state 2, where the likelihood of detection of elusive and cryptic cetacean species, in particular beaked whales, *Kogia*, harbor porpoises, and beluga whales dramatically decreases.

*Response:* NMFS agrees with the WDCS recommendation that at least two MMOs should be available for visual monitoring at all times during the survey, in addition, aerial monitoring will be required for all seismic survey during day-light hours off Beluga River. NMFS does not agree with the WDCS that seismic surveys need to be shut down at night or in sea conditions above Beaufort sea state 2, as the safety zone is small enough (370 m, or 1,214 ft, radius for 180 db re: 1 microPa) and that the action area can be sufficiently monitored with night-vision devices (NVDs), even at Beaufort sea state 2. The comment regarding prohibiting seismic surveys at night is not practicable due to cost consideration and ship time schedule. If the vessel is prohibited from operating during nighttime, the survey would have to be extended for much longer period of time and would not be beneficial to the marine mammal species in the area. In addition, ramp-up prior to initiation of seismic surveys will provide sufficient warning to marine mammals in the project vicinity to temporarily vacate the project area for 1 2 hours. Therefore, NMFS does not believe that monitoring would be compromised as a result of low-light and high waves.

No beaked whales and Kogia spp. are expected to occur in Cook Inlet.

*Comment 38:* The Commission recommends that NMFS provide an assessment of the likelihood of detecting marine mammals at or below the surface within zones of potential impacts, particularly under less than optimal conditions, prior to concluding that these measures will be effective in ensuring that marine mammals are not exposed to potentially harmful sound levels.

*Response:* NMFS believes that monitoring measures described in the EA, in addition to aerial surveys monitoring, would detect all marine mammals at or below the surface within zones of potential impacts. Vessel-based monitoring procedures are standard measures that are commonly used during seismic surveys. Especially for the proposed activities, the safety zone is small enough due to the low-intensity airgun array, visual monitoring from the survey vessel by two MMOs is believed to be adequate. Though such monitoring does not guarantee that there would be no marine mammals within the zones of influence during a survey, NMFS also requires the ramp-up procedure before initiation of airgun firing.

*Comment 39:* The AWI is concerned that ramp-up procedure has been found to attract inquisitive animals to a noise source (no reference provided).

*Response:* NMFS is not aware of any instances that an inquisitive marine mammal has been attracted to a noise source during ramp-up of a seismic survey. In any case, the IHAs will require that surveyors shut down the airgun as soon as a marine mammal is sighted or believed to be inside the safety zones. An inquisitive marine mammal moving to the ship due to its inquisitive nature to the sound source will be easily spotted before it enters the safety zone.

*Comment 40:* HSUS states that the safety zone is inadequate to prevent or minimize stress, displacement, and masking.

*Response:* Regarding the establishment and effectiveness of the safety zone, please referred to *Response* to *Comment 21*; regarding potential stress, displacement, and masking, please refer to *Responses* to *Comments 15, 16, 21, 22, 24, and 25*. Please also refer to the EA for a thorough analysis of the mitigation and monitoring measures for the proposed projects.

*Other – ESA Listing, Subsistence Harvest, and Paper Reduction Act*

*Comment 41:* CBD believes that the threats facing Cook Inlet beluga are of sufficient magnitude and immediacy that NMFS should proceed with an emergency listing provided by Section 4(b)(7) of the ESA and designate the proposed seismic survey area in upper Cook Inlet as critical habitat. The WDCS recommends that whilst NMFS has categorized habitat according to its value and sensitivity, all habitats that the Cook Inlet beluga whales use should be considered critical.

*Response:* As detailed in **Federal Register** notice (65 FR 34590, May 31, 2000), NMFS stated that the MMPA and ESA establish a specific regulatory process for limiting subsistence harvest, and neither statute includes emergency provisions to eliminate portions of the process. Since recent subsistence harvest is considered to be the major link directly to the decline of Cook Inlet beluga whales (NMFS, 2005a), therefore, other emergency polices, strategies, or actions would not likely promote recovery.

Critical habitat designations must be based on the best scientific information available, in an open public process, within specific time-frames. Before designating critical habitat, careful consideration must be given to the economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat. The Secretary of Commerce may exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless excluding the area will result in the extinction of the species concerned.

For additional information regarding Cook Inlet beluga whale conservation, please refer to NMFS' (2005a) *Draft Conservation Plan for the Cook Inlet Beluga Whale (Delphinapterus leucas).*

*Comment 42:* AWI states that the proposed project area is home to endangered Steller sea lions and the Cook Inlet beluga whales that are currently being considered by the U.S. Fish and Wildlife Service (FWS) for listing under the ESA.

*Response:* As stated in the EA, Steller sea lion occurrence is rare in Cook Inlet and its appearance during the project period is unlikely. The Cook Inlet beluga whales are currently being considered by NMFS, not the FWS as mentioned in the comment, for listing under the ESA.

*Comment 43:* CBD observes that given the very low subsistence take of Cook Inlet belugas authorized in recent years, the injury or mortality of even a single beluga by Conoco/Union Oil's activities could very well have the effect of precluding any subsistence harvest in a given year.

*Response:* The subsistence take of Cook Inlet belugas by the Alaskan natives is currently managed under an interim harvest management plan developed by the Alaska native organizations and NMFS (69 FR 17973, April 6, 2004) and is not directly related to the proposed action. The proposed action does not authorize any takes by Level A harassment (injury) or death of any marine mammals within the proposed project area in upper Cook Inlet, nor is such takes anticipated.

*Comment 44:* The CRE notes that they have not been successful in identifying the Paperwork Reduction Act authorizations that would allow NMFS to collect any seismic permit information.

*Response:* Applications and reporting requirements for small take authorizations under sections 101(a)(5)(A) and 101(A)(5)(D) of the MMPA have been approved by the Office of Management and Budget under control number 0648–0151.

**Description of Marine Mammals Affected by the Activity**

Marine mammal species potentially occurring within the proposed action area include the Cook Inlet beluga whales, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales. Among these species, only the Steller sea lion is listed as endangered under the ESA, and it is also designated as depleted under the MMPA. The Cook Inlet beluga whale is designated as depleted under the MMPA. General information for these species can be found in Angliss and Outlaw (2006), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005.pdf*. A more detailed description of these species and stocks within Cook Inlet is provided in the January 5, 2007, **Federal Register** (72 FR 536). Therefore, it is not repeated here.

**Potential Effects on Marine Mammals and Their Habitat**

Seismic surveys using acoustic energy may have the potential to adversely impact marine mammals in the vicinity of the activities (Gordon *et al.*, 2004). The sound source levels (zero to peak) associated with the OBC seismic survey can be as high as 233 – 240 dB re 1 microPa at 1 m. However, most energy is directed downward, and the short duration of each pulse limits the total energy. Received levels within several kilometers typically exceed 160 dB re 1 microPa (Richardson *et al.*, 1995), depending on water depth, bottom type, ice cover, etc. Intense acoustic signals from seismic surveys have been known to cause behavioral alteration such as reduced vocalization rates (Goold, 1996), avoidance (Malme *et al.*, 1986, 1988; Richardson *et al.*, 1995; Harris *et al.*, 2001), and changes in blow rates (Richardson *et al.*, 1995) in several marine mammal species.

The proposed surveys would use a 900–in$^3$ BOLT airgun array consisting of 3 225–in$^3$ airguns and 3 75–in$^3$ airguns. The source level of this array is expected to be considerably lower than the 1,200–in*3* BOLT airgun array used by the U.S. Coast Guard (USCG) vessel *Healy* (70 FR 47792, August 15, 2005). To conservatively assess the received levels from airgun pulses, the USCG's *Healy* modeled data were used to calculate the maximum distances where sound levels would be 190, 180, and 160 dB re 1 microPa rms. The maximum distances where sound levels were estimated at 190, 180, and 160 dB re 1 microPa rms from a single 1,200–in$^3$ BOLT airgun in the northern Beaufort Sea were 313 m (1,027 ft), 370 m (1,214 ft), and 1,527 m (5,010 ft), respectively. However, since the proposed seismic surveys would use a smaller 900–in$^3$ airgun array in an area with soft mud bottom that gradually slopes outward from shore, which is a poor condition for sound transmission (Richardson *et al.*, 1995), the received levels are expected to be significantly lower at these distances.

The seismic surveys would only introduce acoustic energy into the water column and no objects would be released into the environment. The survey vessel would travel at a speed of 4 – 5 knots and the two projects would be conducted in a small area of Cook Inlet for a short period of time.

There is a relative lack of knowledge about the potential impacts of seismic energy on marine fish and invertebrates. Available data suggest that there may be physical impacts on eggs and on larval, juvenile, and adult stages of fish at very close range (within meters) to seismic energy source. Considering typical source levels associated with seismic arrays, close proximity to the source would result in exposure to very high energy levels. Where eggs and larval stages are not able to escape such exposures, juvenile and adult fish most likely would avoid them. In the cases of eggs and larvae, it is likely that the numbers adversely affected by such exposure would be very small in relation to natural mortality. Studies on fish confined in cages that were exposed under intense sound for extended period showed physical or physiological impacts (Scholik and Yan, 2001; 2002; McCauley *et al.*, 2003; Smith *et al.*, 2004). While limited data on seismic surveys regarding physiological effects on fish indicate that impacts are short-term and are most apparent after exposure at very close range (McCauley *et al.*, 2000a; 2000b; Dalen *et al.*, 1996), other studies have demonstrated that seismic guns had little effect on the day-to-day behavior of marine fish and invertebrates (Knudsen *et al.*, 1992; Wardle *et al.*, 2001). It is more likely that fish will swim away upon hearing the approaching seismic impulses

(Engas *et al.*, 1996). Based on the foregoing, NMFS finds preliminarily that the proposed seismic surveys would not cause any permanent impact on the physical habitats and marine mammal prey species in the proposed project area.

**Number of Marine Mammals Expected to Be Taken**

NMFS estimates that approximately 6 – 57 Cook Inlet beluga whales (average 26 whales) out of a population of 302 whales (NMFS, unpublished data) and a maximum of 30 Pacific harbor seals out of a population of 29,175 seals would be harassed incidentally by the two proposed seismic operations from March to June, 2007. These numbers of take represent 2.0 – 18.9 percent (average 8.6 percent) Cook Inlet beluga whales and less than 0.1 percent of Alaska stock of Pacific harbor seals that could be taken by Level B harassment if no mitigation and monitoring measures are implemented. These numbers are based on the animal density, length of track planned, and the assumption that all animals will be harassed at distances where noise at received level is at and above 160 dB re 1 microPa rms. Beluga whale and harbor seal densities were calculated by dividing the daily counts of whales (ranges from 11 – 99, with an average of 46) and seals (75) by the approximate area (1,248 $km^2$, or 482 square miles) surveyed in the Susitna Delta (Beluga River to Pt. MacKenzie) during the most recently published survey for June 2004 (Rugh *et al.*, 2005). Although 18.9 percent of Cook Inlet beluga whales could subject to take by Level B harassment, this estimate was based on an unusually high count of whales on June 3, 2004 in Susitna Delta (from North Foreland to Pt. Mackenzie). Cook Inlet beluga aerial surveys conducted by NMFS in June, 2003 and 2004, provided median counts of whales between 0 – 99, with an average count of 29 whales in the same area. This estimate is conservative as it assumes that all animals exposed by seismic impulses over 160 dB re 1 microPa would be harassed and disturbed. As mentioned earlier that the majority acoustic energy of low frequency airgun impulses falls outside beluga whale's most sensitive hearing range (Richardson *et al.*, 1995), it is most likely that only a portion of whales within the 160 dB re 1 microPa isopleth would be disturbed. In addition, it is also possible that many of the animals would be habituated to this level of acoustic disturbances. Furthermore, mitigation measures, including the ramp-up requirement during the initiation of the seismic operations (see below) could eliminate most, if not all, startling behavior from animals near the proposed project area. Therefore, NMFS believes that the actual number of Level B harassment takes of Cook Inlet beluga whale would be much lower than the estimated average of 26 whales.

There are no similar population surveys for harbor porpoises, Steller sea lions, and killer whales conducted within the proposed project area. However, based on an abundance survey of harbor porpoises within the entire Cook Inlet (Dahlheim *et al.*, 2000), it is estimated that the population density of harbor porpoise in the entire Inlet is 0.0072 animal per $km^2$. Based on this density data, NMFS estimates that about 6 harbor porpoises out of a population of 30,506 porpoises could be harassed incidentally by the two proposed seismic operations from March to June, 2007. This number of take represents less than 0.02 percent of harbor porpoises that could be taken by Level B harassment.

There is no density estimates available for Steller sea lions and killer whales with in Cook Inlet. However, their appearance in Upper Cook Inlet is rare and none of these species were sighted in the upper Inlet during the 2004 survey (Rugh *et al.*, 2005). Therefore, NMFS concludes that the harassment of these species is reasonably believed to be much lower than those of beluga whales and harbor seals.

**Effects on Subsistence Needs**

The proposed project areas are located 4 – 15 miles (6.4 – 24.1 km) from Tyonek, which is predominately a Dena'ina Athabaskan community. However, these areas are not important subsistence areas for Tyonek hunters. The Tyonek native community has been displaced from many traditional hunting (and trapping and fishing) areas north of Tyonek including Beluga River during the twentieth century. As more non-natives utilized and occupied traditional subsistence areas combined with harvest regulation restrictions, changes in the abundance and distribution of subsistence resources, and other factors, Tyonek native subsistence activities have focused closer to the village. While Tyonek natives may harvest one beluga whale per year and occasionally harbor seals (Huntington, 2000), their primary source of meat is moose (Foster, 1982). Therefore, NMFS believes that the proposed projects would not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence harvest.

**Mitigation**

The following mitigation measures are required under the IHAs that were issued to CPAI and UOCC for conducting seismic operations in northwestern Cook Inlet. NMFS believes that the implementation of these mitigation measures would result in the least practicable impact on marine mammal species or stocks and their habitat.

*Time and Frequency*

Seismic operations will be limited from early March to mid-June in portions of northwestern Cook Inlet. During the seismic operations, airguns will only be active for 1 – 2 hours during each of the 3 – 4 slack tide periods, with the vessel moving at a speed of 4 – 5 knots (4.6 – 5.8 mph).

There will be a 1.6 km (1 mile) set back of airguns from the mouth of the Beluga River to comply with Alaska Department of Fish and Game restrictions.

*Establishment of Safety Zones*

The applicants will establish a 370–m (1,214–ft) radius safety zone for cetaceans and a 313–m (1,027–ft) radius safety zone for pinnipeds for the seismic operations. These safety zone radii were calculated from a model for a 1,200–$in^3$ BOLT array used in the Beaufort Sea where the received sound pressure levels (SPL) attenuated to 180 dB and 190 dB re 1 microPa rms, respectively. Since the data used in calculating the size of safety zones were from a much larger array, while the proposed seismic operations will use a smaller array in an area with poor conditions for sound transmission, NMFS believes that these safety zone radii are conservative. Additional data will be acquired to verify the 190, 180, and 160 dB (rms) distances for the airgun configurations during the proposed seismic operations, and the disturbance could be modified if NMFS finds that the level of take is being exceeded and resulting in higher than a negligible impact on the species or stocks in question. An independent marine acoustic firm, will be used to acquire the data. A scientifically valid sampling design will be followed to collect data at the beginning of the seismic program. The data will be used to calibrate the acoustic model and adjust the safety radii to match the field values for the 190, 180, and 160 dB distances for each array, if different from these estimated values.

Safety zones will be surveyed and monitored prior to, during, and after the airgun seismic operations. A detailed description of marine mammal

monitoring is described in the Monitoring and Reporting section below.

*Speed and Course Alteration*

If a marine mammal is detected outside the safety radius and based on its position and the relative course of travel is likely to enter the safety zone, the vessel's speed and/or direct course may, when practicable and safe, be changed to avoid the impacts to the animal. The marine mammal activities and movements relative to the seismic and support vessels must be closely monitored to ensure that the animal does not (1) approach the safety radius, or (2) enter the safety zone. If either of these scenarios occur, further mitigation measures must be taken (i.e., either further course alterations or power down or shut down of the airgun(s)).

*Power-down Procedures*

A power down involves decreasing the number of airguns in use so that the radius of the 180- or 190–dB zone is decreased to the extent that marine mammals are not in the safety zone. During a power-down, one airgun is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic guns in the area.

If a marine mammal is detected outside the safety zone but is likely to enter the safety zone, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns must be powered down before the animal is within the safety zone.

*Shut-down Procedures*

A shut-down occurs when all airgun activity is suspended. The operating airgun(s) must be shut down if a marine mammal approaches the applicable safety zone and a power down still would not likely to keep the animal outside the newly adjusted smaller safety zone. The operating airgun(s) must also be shut down completely if a marine mammal is found within the safety zone during the seismic operations. The shut-down procedure should be accomplished within several seconds (of a ''one shot'' period) of the determination that a marine mammal is within or about to enter the safety zone.

Following a shut-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it is visually observed to have left the safety zone, or if it has not been seen within the safety zone for 30 minutes.

*Ramp-up Procedures*

Although marine mammals will be protected from Level A harassment by establishment of a safety zone at a SPL levels of 180 and 190 dB re 1 microPa rms for cetaceans and pinnipeds, respectively, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, and to further reduce Level B harassment by startling marine mammals with a sudden intensive sound, CPAI and UOCC are required to implement ''ramp-up'' practice when starting up airgun arrays. Ramp-up will begin with the smallest airgun in the array that is being used for all subsets of the 6–gun array. Airguns will be added in a sequence such that the source level in the array will increase at a rate no greater than 6 dB per 5 minutes. During the ramp-up, the safety zone for the full 6–airgun system will be maintained.

**Monitoring**

*Vessel-based Monitoring*

Vessel based monitoring will be conducted by at least two qualified NMFS-approved MMOs. Reticle binoculars (e.g., 7 x 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) would be standard equipment for the monitors.

Vessel-based MMOs will begin marine mammals monitoring at least 30 minutes prior to the planned start of airgun operations and during all periods of airgun operations. MMOs will survey the safety zone to ensure that no marine mammals are seen within the zone before a seismic survey begins. If marine mammals are found within the safety zone, seismic operations will be suspended until the marine mammal leaves the area. If a marine mammal is seen above the water and then dives below, the operator will wait 30 minutes, and if no marine mammals are seen by the MMOs in that time it will be assumed that the animal has moved beyond the safety zone. Observations will also be conducted during all ramp-up procedures to ensure the effectiveness of ramp-up as a mitigation measure. When feasible, observations will also be made during transits, moving cable, and other operations when airguns are inactive.

Data for each distinct marine mammal species observed in the proposed project area during the period of the seismic operations would be collected. Numbers of marine mammals observed, species identification if possible, frequency of observation, the time corresponding to the daily tidal cycle, and any behavioral changes due to the airgun operations will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide: (1) Basis for real-time mitigation (airgun shut-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

*Aerial Monitoring*

In addition to vessel monitoring, seismic surveys that will be conducted off the Beluga River between mid-March and mid-May by CPAI will also be required to conduct aerial monitoring. The aerial surveys will: (1) determine the presence and relative numbers of beluga whales between the west side of the Susitna River and North Foreland, (2) determine the location of belugas relative to seismic operations, and (3) record other marine mammals observed during the seismic surveys.

The aerial monitoring area will be centered on the project area plus a buffer (from Susitna River to North Foreland) for detecting belugas before or after they pass through the project area. The boundary for the aerial survey extends approximately 7 mi (11 km) south of the project area to the North Foreland, approximately 7 mi (11 km) north to the Susitna River, West Fork, and 0.25 mi (0.4 km) from shore. The size of the survey area provides a design for observing whales before and during exposure to seismic sounds.

Aerial monitoring will be conducted from a single engine helicopter, which will fly a single transect line paralleling the shoreline along the coast in the project area. The survey will begin from

the north and finish by returning to the Beluga Gas Field, which will be the base of helicopter operations. This pattern will be flown unless observation conditions (glare, etc) require flying from south to north depending on the effect of glare on observations. The helicopter will fly at 1,500 ft (457 m), due to glide path needs, and at a ground speed of 60 knot (111 km/h). This altitude should prevent disturbance of marine mammals and birds by the helicopter noise.

Helicopter monitoring will be conducted at a frequency that reflects the monthly abundance of belugas in the project area (LGL, 2006). The helicopter will be flown once per week in March when few if any whales are expected in the project area. However, should belugas be observed (by helicopter or boat), helicopter will be flown daily until whales are not observed for two consecutive days. Once belugas are no longer observed for two consecutive days, helicopter will be flown once per week in March. Aerial monitoring will be increased to twice a week through mid-April, until such time as belugas are observed, when helicopter will be flown daily until whales are not observed for two consecutive days. After mid-April, aerial monitoring will be conducted daily when the number of belugas transiting through the project area to the upper Cook Inlet is anticipated to be higher. Aerial monitoring will fly 1 – 2 transects shortly before and half (0.50) of a transect during seismic operations, which corresponds to the 3 – 4, 1–2 hour slack tides each day. Half transects are flown during seismic operations to prevent noise interference on the surveys. Half transect flight direction will be determined by the relative position of activities to the helicopter landing location. Aerial monitoring will alternate over various tidal cycles when ever possible, since beluga distribution may vary during the tidal cycles (LGL, 2006).

To the extent consistent with applicable aviation regulation, aerial surveys will be conducted under the following conditions: (1) when the pilot considers it safe to do so; (2) during daylight hours; and (3) during good viewing conditions (ceiling height above 1,500 ft (457 M) and Beaufort Sea States below 4. Flights will also be oriented to minimize sun glare on the observer.

One NMFS-approved MMO will be on the helicopter observing and recording marine mammals, covering the 180o view in front of the helicopter. Space will be made available on the helicopter for NMFS staff to participate in surveys at least twice a month.

Data from aerial monitoring will be recorded on the species, number, group size, location (latitude/longitude), time, date, direction of travel, angle from helicopter as determined by using a clinometer, ceiling height, Beaufort Sea State, glare, weather, tide, real time positions (latitude/longitude) of seismic survey vessel, shooting, and vessel activities. Marine mammal behavior data will be recorded when possible. Observation conditions will be recorded at the start and finish of each survey or whenever conditions change. All information collected during the marine mammal survey and/or reported to the vessel will be recorded on a field form.

*Land-based Monitoring*

Land-based monitoring will be conducted by the MMO during days when no aerial monitoring is practicable. Monitoring will be conducted at Ladd Landing, a site previously used for land-based observations (LGL, 2006). The MMO will use binoculars to regularly scan the area visible from the land site for marine mammals. Data recorded will include sighting, weather, sea state, glare, amount of viewable area visible, and seismic operation information. Sighting data will include species, number, group size, direction of travel, date, time, and distance from shore.

**Reporting**

Reports from aerial and land-based monitoring will be faxed or e-mailed to NMFS Anchorage Field Office on a daily basis.

Reports from CPAI and UOCC will be submitted to NMFS within 90 days after the end of the respective projects. The reports will describe the operations that were conducted, the marine mammals that were detected near the operations, and provide full documentation of methods, results, and interpretation pertaining to all monitoring. The reports will also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

**National Environmental Policy Act (NEPA)**

In January 2007, NMFS prepared a draft EA on the issuance of IHAs to CPAI and UOCC to take marine mammals by harassment incidental to conducting seismic operations in upper Cook Inlet, Alaska. The draft EA was released for public review and comment along with the applications and the proposed IHAs. During the 30–day public comment period NMFS received comments from the HSUS, CBD, WDCS, and AWI on the draft EA. All comments are addressed in full in the Comments and Responses section. Subsequently, NMFS finalized the draft EA and on March 30, 2007, issued a Finding of No Significant Impact on the proposed project.

**Endangered Species Act (ESA)**

Based on a review conducted by NMFS Alaska Regional Office biologists, it is not likely that any ESA-listed species would be affected due to the proposed seismic operations. Steller sea lions are recorded in these waters, but are considered uncommon in spring and early summer in the proposed project area. Therefore, NMFS has determined that section 7 consultation is not necessary.

**Determinations**

NMFS has determined that small numbers of beluga whales, Pacific harbor seals, and harbor porpoises may be taken incidental to seismic surveys, by no more than Level B harassment and that such taking will result in no more than a negligible impact on such species or stocks. In addition, NMFS has determined that Steller sea lions and killer whales, if present within the vicinity of the proposed activities could be taken incidentally, by no more than Level B harassment and that such taking would result in no more than a negligible impact on such species or stocks. Although there is no estimated take numbers for Steller sea lions or killer whales available due to their rare occurrence within the project areas. Regardless, given the infrequent occurrence of these species (or none at all), NMFS believes that any take would be significantly lower than those of beluga whales or harbor seals.

While behavioral modifications, including temporarily vacating the area during the project period may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless finds that this action would result in no more than a negligible impact on these marine mammal species and/or stocks. NMFS also finds that the proposed action will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

In addition, no take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

**Authorization**

NMFS has issued IHAs to CPAI and UOCC for the potential harassment of

small numbers of Cook Inlet beluga whales, Pacific harbor seals and harbor porpoises incidental to conducting seismic operations in the northwestern Cook Inlet in Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Likewise, NMFS has issued IHAs for potential harassment of Steller sea lions and killer whales incidental to conducting of seismic operations in the northwestern Cook Inlet in Alaska, provided that previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 30, 2007.

**Angela Somma,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–6488 Filed 4–5–07; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 040307A]**

### Mid-Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's Surfclam/Ocean Quahog and Tilefish Committee and Tilefish Advisory Panel will hold a public meeting.

**DATES:** The meeting will be held on Thursday, April 26, 2007, from 9 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Crowne Plaza Hotel, 2 Harmon Plaza, Secaucus, NJ; telephone: (201) 348–6900.

*Council address*: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review progress regarding Amendment 1 to the Tilefish Fishery Management Plan (FMP). It is expected that preferred management measures will be discussed and identified when possible. Amendment 1 to the Tilefish FMP addresses: (1) Possible implementation of an Individual Fishing Quota (IFQ) management system for tilefish [initial IFQ allocation, IFQ transferability of ownership, IFQ share accumulation, fees and cost recovery, establish flexibility to revise/adjust IFQ program, establish IFQ reporting requirements, other]; (2) Possible implementation of recreational bag-size limit; (3) Possible implementation of recreational permits and reporting requirements; (4) Potential improvements for monitoring of tilefish commercial landings; (5) Potential revisions to current tilefish reporting requirements (Interactive Voice Response); (6) Possible expansion of and revision to the list of management measures that can be adjusted via the framework adjustment process; (7) Potential revisions to essential fish habitat (EFH) designation; (8) Potential revisions to habitat areas of particular concern (HAPC) designation; (9) Consideration of possible measures to reduce gear impacts on EFH; and, (10) other issues to be considered in Amendment 1.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: April 3, 2007.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–6428 Filed 4–5–07; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. /707A]**

### Annual National Marine Fisheries Service/State Marine Fisheries Directors Meeting

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

**ACTION:** Notice of open public meetings.

**SUMMARY:** Notice is hereby given of an annual meeting of the National Marine Fisheries Service (NMFS) and the State Marine Fisheries Directors. This annual meeting provides the opportunity for State and Federal fishery managers to discuss fishery management areas ofconcern. The meeting will be hosted by the Pacific States Marine Fisheries Commission(PSMFC). All sessions will be open to the public.

**DATES:** The meeting will be held on May 1 – May 3, 2007. See **SUPPLEMENTARY INFORMATION** for dates, times, and agenda.

**ADDRESSES:** The meeting will be held at the Hotel Del Coronado, 1500 Orange Avenue, Coronado, CA 92118, (800) HOTELDEL.

**FOR FURTHER INFORMATION CONTACT:** Chris Moore, Chief, Partnerships and Communications Division, Office of Sustainable Fisheries, NMFS; telephone: (301) 713–2379x165.

**SUPPLEMENTARY INFORMATION:** As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of this meeting. This annual meeting provides the opportunity for State Marine Fisheries Directors and Federal fishery managers to discuss fishery management areas of concern.

**Tuesday, May 1, 2007**

*8 a.m. to 8:30 a.m.* – Opening remarks and introductions will be presented by Dr. William T. Hogarth, Assistant Administrator for Fisheries, and by Mr. Randy Fisher, Executive Director of PSMFC.

*8:30 a.m. to 10 a.m.* – Presentations by the three Interstate Marine Fisheries Commissions; overview of state activities, and Gulf States experience with natural disasters.

*10:30 a.m. to 11:30 a.m.* – Implementation of Magnuson-Stevens Fishery Management and Conservation Act (MSA) will be presented; recreational fisheries registry and recreational fisheries data Marine

Recreational Fisheries Statistical Survey (MRFSS) and National Research Council (NRC).

*1 p.m. to 3 p.m.* – Discussion on recreational data issues (continued).

*3:30 p.m. to 4 p.m.* – Implementation of MSA will be presented; annual catch limits/accountability measures.

*4 p.m. to 4:30 p.m.* – Science concerns and stock assessments will be discussed.

*4:30 p.m. to 5 p.m.* – NOAA Fisheries Budget will be discussed.

**Wednesday, May 2, 2007**

*8 a.m. to 9 a.m.* – Implementation of MSA will be presented; National Environmental Protection Act (NEPA).

*9 a.m. to 10 a.m.* – Enforcement updates and vessel monitoring system (VMS) will be presented.

*10:30 a.m. to 11 a.m.* – Specific management issues will be discussed; circle hooks, etc.

*11 a.m. to 11:30 a.m.* – National Outreach Plan will be presented.

*1 p.m. to 2 p.m.* – National Fish Habitat Plan will be presented.

*2 p.m. to 3 p.m.* – Aquaculture Legislation update will be presented.

*3:30 p.m. to 5:30 p.m.* – State Directors will discuss areas of concern: grants, etc.

**Thursday, May 3, 2007**

*8 a.m. to 10 a.m.* – State Directors discussion of areas of concern (continue).

*10 a.m. to 11 a.m.* – Wrap-up meeting.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary to allow for full discussion.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chris Moore, Chief, Partnerships and Communications Division, Office of Sustainable Fisheries, NMFS; telephone: (301) 713–2379 ext: 165, at least 5 days prior to the meeting date.

Dated: April 2, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–6399 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. /607C]**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** Limit 10(i) of the June 28, 2005, Endangered Species Act (ESA) provides that road maintenance programs that comply with a program substantially similar to that contained in the Oregon Department of Transportation (ODOT) Guide that is determined to meet or exceed the protections provided by the ODOT Guide can be excepted from the prohibitions provided in earlier sections of that rule. The Five Counties Salmon Conservation Program's (5 C) ''A Water Quality and Stream Habitat Protection Manual for County Road Maintenance in Northwestern California Watersheds'' (Manual), is a comprehensive road maintenance program for Humboldt, Del Norte, Siskiyou, Trinity, and Mendocino Counties (5 C area). If the Manual is qualified under Limit 10(i), each of the five counties would adopt the Manual as its road maintenance program. To facilitate NMFS review of the Manual under Limit 10(i), 5 C prepared a submittal package that addresses each of the approval criterion in the 4(d) rule. The Manual would affect two Evolutionarily Significant Units (ESUs) of threatened salmon and two Distinct Population Segments (DPSs) of threatened steelhead identified in the **SUPPLEMENTARY INFORMATION** below. The Manual specifies the future management practices for routine road maintenance activities within the 5 C area. This notice serves to inform the public of the availability of the Manual and submittal package for review and comment.

**DATES:** Written comments on the Manual and submittal package must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Daylight Savings Time on May 7, 2007.

**ADDRESSES:** Written comments should be addressed to Garwin Yip, Protected Resources Division, National Marine Fisheries Service, 1655 Heindon Road, Arcata, CA 95521. Comments may also be sent via fax to (707) 825–4840 or e-mail at *5C4DRule.SWR@noaa.gov*. Comments will not be accepted if submitted via the Internet. Copies of the Manual and submittal package are available on the Internet at *http://www.5counties.org*.

**FOR FURTHER INFORMATION CONTACT:** Garwin Yip at phone number: (707) 825–5166, or e-mail: *garwin.yip@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** This notice is relevant to the salmonid ESUs and DPSs listed as threatened in the 5 C area and covered by the June 2005 4(d) Rule. These ESUs and DPSs include the Southern Oregon/Northern California Coast coho salmon ESU, California Coastal Chinook salmon ESU, Northern California steelhead DPS, and Central California Coast steelhead DPS.

**Background**

On June 28, 2005, NMFS adopted a rule under section 4(d) of the ESA of 1973, as amended prohibiting the ''take'' of 20 groups of salmon and steelhead listed as threatened under the ESA the 4(d) Rule. That rule also describes limits on the extension of the definition of take to certain state and local programs in 13 specific categories, including Routine Road Maintenance (Limit 10). Limit 10(i) provides that routine road maintenance activities conducted by employees or agents of a state, county, city, or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide are eligible for the limitation on the definition of ''take'' of threatened species as to those road maintenance activities.

Each of the 5 counties of Humboldt, Del Norte, Siskiyou, Trinity, and Mendocino will adopt the Manual to obtain coverage under Limit 10(i) of the 4(d) Rule, should NMFS find the Manual is consistent with Limit 10(i). For NMFS to approve the Manual under Limit 10(i), it must find that the Manual meets or exceeds the protections provided by the ODOT Guide. To facilitate the approval of the Manual, the 5 C prepared the submittal package that includes a comparison, where applicable, of each category of maintenance practices and how they are equal to or exceeds the protections provided by the ODOT Guide.

In March 2007, the 5 C submitted the submittal package and Manual to NMFS for approval under the 4(d) rule. Within the Manual, Chapter 1 explains watershed basics, stream habitat needs, and road treatment principles. Chapter 2 explains the regulatory process in establishing the necessary permits in

order to implement any of the routine road maintenance activities. Chapters 3 through 9 provide the Best Management Practices (BMPs) for routine road maintenance activities, and includes a description of the activity, any environmental concerns, permits that may be required, and useful references. The Manual also consists of specific road maintenance activities, staff training, implementation and effectiveness monitoring, adaptive management, emergency response measures, and reporting requirements.

For each road maintenance activity, the Manual provides BMPs designed to achieve desired conservation outcomes. Only activities that fall under the definition of ''maintenance'' are include in the Manual. Repair and maintenance include activities that are conducted on currently serviceable structures, facilities, and equipment which involve no expansion of or change in use of such structures, facilities, and equipment beyond those which existed previously, and do not result in significant negative hydrological impact.

The road maintenance project categories covered by the Manual include maintaining roads (e.g., grading, road surfacing, dust abatement, vegetation management, and winterizing the road system), maintaining culverts (e.g., culvert cleaning, improvement, repair, sizing, and replacement; ditch relief culverts, and temporary stream diversions), disposal of spoils, managing maintenance yards (e.g., facility housekeeping practices, building and grounds maintenance, vehicle and equipment maintenance, and material use and storage), maintaining bridges (e.g., bridge maintenance, repair, and drift removal), working with an emergency (e.g., emergency maintenance, slide and settlement repair, and accident clean-up), and dealing with snow and ice (snow and ice removal, de-icing/anti-icing and sanding).

As specified in 50 CFR 223.203(b)(10)(i), the prohibitions of 50 CFR 223.203(a) relating to certain threatened species do not apply to routine road maintenance activities provided that NMFS finds that the program meets or exceeds the protections provided by the ODOT Guide.

**Authority**

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (June 28, 2005; 70 FR 37160) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activity associated with routine road maintenance, provided that any state or local program comports with the standard described above and has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (June 28, 2005; 70 FR 37160).

Dated: March 30, 2007.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–6413 Filed 4–5–07; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 040207B]**

### Endangered Species; File No. 1547–01

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

**ACTION:** Notice; issuance of permit modification.

**SUMMARY:** Notice is hereby given that the New York State Department of Environmental Conservation (Kathryn Hattala, Principal Investigator), 21 South Putt Corners Road; New Paltz, New York 12561, has been issued a modification to scientific research Permit Number 1547.

**ADDRESSES:** The permit modification and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9328; fax (978) 281–9394.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Brandy Hutnak, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** On February 23, 2007, notice was published in the **Federal Register** that a modification of Permit Number 1547, issued October 27, 2006, (71 FR 65470), had been requested by the above named organization. The requested permit modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

In order to evaluate seasonal movement of shortnose sturgeon (*Acipenser brevirostrum*) in Haverstraw and Newburgh Bays of the Hudson River, the NYSDEC was previously authorized annually to capture a maximum of 500 adult and juvenile shortnose sturgeon with gill nets, and to measure, weigh, scan for tags, insert passive integrated transponder tags and Carlin tags (if untagged) and then release. The applicant now proposes to collect soft fin-ray tissue samples from all captured shortnose sturgeon. The goal of the additional research would be to document and map the genetic identity of shortnose sturgeon in the Hudson River. The modification would run concurrently with the original permit until October 31, 2011.

Issuance of this modification, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 2, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–6484 Filed 4–5–07; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 040207A]**

### Endangered Species; File No. 1580

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Dynegy Northeast Generations, Inc. (Dynegy), 992–994 River Road, Newburgh, New York 12550, has been issued a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review

upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

**FOR FURTHER INFORMATION CONTACT:** Brandy Hutnak or Malcolm Mohead, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On September 6, 2006, notice was published in the **Federal Register** (71 FR 52534) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

This permit authorizes Dynegy to annually capture up to 82 juvenile and adult shortnose sturgeon and 40 shortnose sturgeon larvae. Researchers are authorized to capture, handle, measure, weigh, scan for tags, Passive Integrated Transponder (PIT) and Carlin tag, photograph, tissue sample, and release up to 82 juvenile and adult sturgeon. Additionally, researchers may lethally take up to 40 shortnose sturgeon larvae. This research will help to evaluate the life history, population trends, and spatial, temporal, and size distribution of the shortnose sturgeon collected in the Hudson River during an annual Biological Monitoring Program.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 2, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–6486 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the President's Commission on Care for America's Returning Wounded Warriors

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming Meeting of the President's Commission on America's Returning Wounded Warriors. The purpose of the Committee meeting is to introduce new members and conduct briefings for the Commissioners. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 11 April 2007. Oral presentations by members of the public will be permitted only on 14 April at 1 to 2:45 p.m. before the full Committee. Presentations will be limited to 5 minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 11 April 2007, 5 p.m. and one copy of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit one copy of the statement to the Commission staff by 5 p.m. POC Col Denise Dailey or Adrianne Holloway, toll free 877–599–2035 or Fax statements (703) 588–2046.

Due to scheduling difficulties the Commission was unable to finalize its agenda in time to publish a **Federal Register** meeting notice for the 15-calendar days required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

**DATES:** Saturday, 14 April 2007.

*Location:* Main Conference Center, National Transportation Safety Board, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**FOR FURTHER INFORMATION CONTACT:** *For Further Information on Submitting Statements Contact:*

Col Denise Dailey or Adrianne Holloway, toll free 877–599–2035 or Fax statements (703) 588–2046.

**SUPPLEMENTARY INFORMATION:** Meeting agenda.

**14 April 2007**

8:30 a.m.
Welcome Commissioners,
Administrative Remarks and Level I Security Training
10 a.m. Public Session
Presentations
The Casualty System
Disability System
12–1 p.m. Lunch
1–2:45 p.m. Public Presentations
Records Transfer
5 p.m. Wrap Up

**Not Open to Public**

8:30a.m.–10 a.m. Committee Administrative and Security Training.

**Date and Times**

**Note:** Exact order may vary.

Dated: April 2, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 07–1712 Filed 4–5–07; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[USAF–2007–0018]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The proposed action will be effective on May 7, 2007 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

**FOR FURTHER INFORMATION CONTACT:** Ms. Novella Hill at (703) 588–7855.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as

amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on March 6, 2007, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: April 2, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F011 AF A3 B DoD**

**SYSTEM NAME:**

DoD Foreign Clearance Program Records.

**SYSTEM LOCATION:**

Andrew T. McNamara Headquarters Complex, Defense Technical Information Center (DTIC), 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6218.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military, Department of Defense (DoD) civilians, and non-DoD personnel traveling under DoD sponsorship (e.g., contractors, foreign nationals and dependents) and includes temporary travelers worldwide as defined by the DoD Foreign Clearance Guide Program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Aircraft diplomatic clearance and personnel travel requests, which may contain the individual's name; rank/pay grade; military branch or department; passport number; office address and telephone number; official and personal email address; detailed information on sites to be visited; visitation dates; and purpose of visit.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Public Law 99–399, Omnibus Diplomatic Security and Antiterrorism Act of 1986; 22 U.S.C. 4801, 4802, and 4805, Foreign Relations and Intercourse; DODD 4500.54, Official Temporary Duty Travel Abroad; DOD 4500.54–G, Department of Defense Foreign Clearance Guide; and E.O. 9397 (SSN).

**PURPOSE(S):**

To provide the Department of Defense with a web-based automated system to request, clear, and audit aircraft diplomatic and personnel travel clearances worldwide; to provide individual travelers with intelligence and travel warnings; and to provide the Defense Attaché and other DoD authorized officials with information necessary to verify aircraft diplomatic clearances and official travel by DoD personnel.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

**IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT, THESE RECORDS OR INFORMATION CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:**

To the Department of State Regional Security Officer, U.S. Embassy officials, and foreign law enforcement and security agencies for the purpose of coordinating mission and security support for DoD travelers.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retiring, accessing, retaining, and disposing of records.

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Individual's name, Social Security Number (SSN), passport number, dates of travel or mission, and aircraft mission.

**SAFEGUARDS:**

Electronic records are located in the Aircraft and Personnel Automated Clearance System (APACS) computer database with built in safeguards. Computerized records are maintained in controlled areas accessible only to authorized personnel with an official need-to-know access. In addition, automated files are accessed by individual account with appropriate permissions, are password protected, and are in compliance with the applicable laws and regulations.

**RETENTION AND DISPOSAL:**

Records are destroyed 1 year after mission/travel is completed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, International Sovereignty Policy, International Treaties and Agreements Division, Headquarters, United States Air Force, 1480 Air Force Pentagon, Washington, DC 20330–1480.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to HQ USAF/A3SPI, 1480 Air Force Pentagon, Washington, DC 20330–1480.

Requests should contain individual's full name, Social Security Number (SSN), and/or passport number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to HQ USAF/A3SPI, 1480 Air Force Pentagon, Washington, DC 20330–1480.

Requests should contain individual's full name, Social Security Number, and/or passport number.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From individuals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7–6457 Filed 4–5–07; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 7, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound

Evaluation'']. Persons submitting comments electronically should not submit paper copies.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 2, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Planning, Evaluation and Policy Development

*Type of Review:* Revision.

*Title:* Study of Education Data Systems and Decision Making.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,494.

*Burden Hours:* 1,207.

*Abstract:* The purpose of the study is to examine the prevalence, use, and outcomes of education data systems for accountability, assessment, and instructional improvement purposes.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3263. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–6448 Filed 4–5–07; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

## Submission for OMB Review; Comment Request

**AGENCY:** Department of Education

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 7, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation''']. Persons submitting comments electronically should not submit paper copies.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 2, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Institute of Education Sciences

*Type of Review:* Revision of a currently approved collection.

*Title:* What Works Clearinghouse Database Forms and Customer Surveys.

*Frequency:* On occasion.

*Affected Public:* Individuals or household (primary); businesses or other for-profit; not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 7,273.

*Burden Hours:* 861.

*Abstract:* The What Works Clearinghouse (WWC) public submission databases will allow members of the public to submit nominations for studies, interventions, and topics that they would like the WWC to review. The evaluator database will enable the WWC to provide the public with a directory of available outcomes evaluators. Data from the customer surveys will be used to create indicators of how successfully the WWC is meeting the needs of various groups of its users.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3273. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–

245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–6449 Filed 4–5–07; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Safe and Drug-Free Schools Overview Information; Readiness and Emergency Management for Schools Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

**Note:** The title of the Emergency Response and Crisis Management grant program has been revised to Readiness and Emergency Management for Schools to reflect terminology used in the emergency management field. Hereafter, the grant program under CFDA 84.184E will be referred to as the Readiness and Emergency Management for Schools grant program.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.184E

*Dates: Applications Available:* April 6, 2007.

*Deadline for Transmittal of Applications:* May 21, 2007.

*Deadline for Intergovernmental Review:* July 24, 2007.

*Eligible Applicants:* Local educational agencies (LEAs).

**Note:** The Secretary is limiting eligibility under the Readiness and Emergency Management for Schools grant competition (CFDA Number 84.184E) to applicants that do not currently have an active grant under this program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds (71 FR 70369).

*Estimated Available Funds:* $24,000,000. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards later in FY 2007 and in FY 2008 and subsequent years from the rank-ordered list of unfunded applicants from this competition.

*Estimated Range of Awards:* $100,000—$500,000.

*Estimated Average Size of Awards:* $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and $500,000 for large districts (76 or more school facilities).

*Estimated Number of Awards:* 73.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 18 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The Readiness and Emergency Management for Schools (REMS) grant competition supports efforts by LEAs to improve and strengthen their school emergency management plans, including training school personnel and students in emergency response procedures; communicating emergency plans and procedures with parents; and coordinating with local law enforcement, public safety, public health, and mental health agencies.

*Priorities:* These priorities are from (1) the notice of final priorities and other application requirements for this program, published in the **Federal Register** on June 21, 2005 (70 FR 35652) and (2) the notice of final priorities published in the **Federal Register** on May 11, 2006 (71 FR 27576).

*Absolute Priority:* For FY 2007 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only those applications that meet this priority.

This priority is:

*Improvement and Strengthening of School Emergency Management Plans*

This priority supports local educational agency (LEA) projects to improve and strengthen emergency management plans, at the district and school-building level addressing the four phases of emergency management: Prevention-Mitigation, Preparedness, Response, and Recovery. Plans must include: (1) Training for school personnel and students in emergency management procedures; (2) Coordination with local law enforcement, public safety, public health, and mental health agencies; and (3) A method for communicating school emergency management policies and reunification procedures to parents and guardians.

*Competitive Preference Priorities:* For FY 2007, and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application that meets Priority 1 and we award an additional 5 points to an application that meets Priority 2. Applications that qualify for Priorities 1 and 2 will receive points only under Priority 1.

These priorities are:

*Priority 1—Competitive Preference Priority for LEAs That Have Not Previously Received a Grant Under the REMS Program (CFDA 84.184E) and Are Located in an Urban Areas Security Initiative Jurisdiction*

Under this priority, we give a competitive preference to applications from local educational agencies (LEAs) that (1) have not yet received a grant under this program (CFDA 84.184E) and (2) are located in whole or in part within Urban Areas Security Initiative (UASI) jurisdictions, as determined by the U.S. Department of Homeland Security (DHS). An applicant must meet both of these criteria in order to receive the competitive preference. Under a consortium application, all members of the LEA consortium need to meet both criteria to be eligible for the preference. Applications submitted by educational service agencies (ESAs) are eligible under this priority if each LEA to be served by the grant is located within a UASI jurisdiction and has not received funding under this program directly, or as the lead agency or as a partner in a consortium; however the ESA itself may have received a previous grant.

Because DHS' determination of UASI jurisdictions may change from year to year, applicants under this priority must refer to the most recent list of UASI jurisdictions published by DHS when submitting their applications.

**Note:** The Governor of each State has designated a State Administrative Agency (SAA) as the entity responsible for applying for, and administering, funds under the Department of Homeland Security Grant Program (which includes the UASI program). The SAA is also responsible for defining the geographic borders for jurisdictions included in the UASI program. Guidance on jurisdiction definitions can be found at: *http://www.ojp.usdoj.gov/odp/grants_hsgp.htm.*

*Priority 2—Competitive Preference Priority for LEAs That Have Not Previously Received a Grant Under the REMS Program (CFDA 84.184E)*

Under this priority, we give competitive preference to applications from local educational agencies (LEAs) that have not previously received a grant under this program (CFDA 84.184E). Applicants (other than educational service agencies (ESAs)) that have received funding under this program directly, or as the lead agency or as a partner in a consortium application under this program, will not

receive competitive preference under this priority. For applications submitted by ESAs, each LEA to be served by the grant must not have received funding under this program directly, or as the lead agency, or as a partner in a consortium application, in order for the ESA to be eligible under this priority; however the ESA itself may have received a previous grant.

*Other Application Requirements:* These requirements are from (1) the notice of final priorities and other application requirements for this program, published in the **Federal Register** on June 21, 2005 (70 FR 35652) and (2) the notice of final priorities and application requirements published in the **Federal Register** on May 11, 2006 (71 FR 27576).

1. *Partner Agreements.* To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: Law enforcement, public safety, public health, mental health, and the head of the applicant's local government (for example, the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency management plans at the district and school-building level, a description of each partner's commitment to the continuation and continuous improvement of emergency management plans at the district and school-building level, and an authorized signature representing the LEA and each partner acknowledging the agreement. If one or more of the five partners listed is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety, public health, mental health, or head of local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

2. *Coordination with State or Local Homeland Security Plan.* All emergency management plans must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. All States submitted such a plan to the Department of Homeland Security on January 30, 2004. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with, and follow, the requirements of its State or local Homeland Security Plan for emergency services and initiatives.

3. *Implementation of the National Incident Management System (NIMS).* Applicants must agree to implement their grant in a manner consistent with the implementation of the NIMS in their communities. Applicants must include in their applications an assurance that they have met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, applicants must refer to the most recent list of NIMS requirements published by DHS when submitting their applications. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements. Information about the FY 2007 NIMS requirements for tribal governments and local jurisdictions, including LEAs, may be found at: *http://www.fema.gov/pdf/emergency/nims/imp_mtrx_tribal.pdf*.

**Note:** An LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential to ensure that first responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation is available at: *http://www.fema.gov/emergency/nims/nims_compliance.shtm*.

4. *Individuals with Disabilities.* The applicant's plan must demonstrate that the applicant has taken into consideration the communication, transportation, and medical needs of individuals with disabilities within the school district.

5. *Infectious Disease Plan.* To be considered for a grant award, applicants must agree to develop a written plan designed to prepare the LEA for a possible infectious disease outbreak, such as pandemic influenza. Plans must address the four phases of emergency management (Mitigation-Prevention, Preparedness, Response, and Recovery) and include a plan for disease surveillance (systematic collection and analysis of data that lead to action being taken to prevent and control a disease), school closure decision-making, business continuity (processes and procedures established to ensure that essential functions can continue during and after a disaster), and continuation of educational services.

**Program Authority:** 20 U.S.C. 7131.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priority and other application requirements published in the **Federal Register** on June 21, 2005 (70 FR 35652). (c) The notice of final priorities and application requirements published in the **Federal Register** on May 11, 2006 (71 FR 27576). (d) The notice of final eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $24,000,000. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards later in FY 2007 and in FY 2008 and subsequent years from the rank-ordered list of unfunded applicants from this competition.

*Estimated Range of Awards:* $100,000–$500,000.

*Estimated Average Size of Awards:* $100,000 for small districts (1–20 school facilities); $250,000 for medium-sized districts (21–75 school facilities); and $500,000 for large districts (76 or more school facilities).

*Estimated Number of Awards:* 73.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 18 months.

## III. Eligibility Information

1. *Eligible Applicants:* LEAs.

**Note:** The Secretary is limiting eligibility under the Readiness and Emergency Management for Schools grant competition (CFDA 84.184E) to applicants that do not currently have an active grant under this program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds (71 FR 70369).

*2. Cost Sharing or Matching:* This program does not involve cost sharing or matching.

*3. Other:*

(a) *Equitable Participation by Private School Children and Teachers.*

Section 9501 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), requires that SEAs, LEAs, or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, LEAs must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an LEA must consult with private school officials on issues such as: Hazards/vulnerabilities unique to private schools in the LEA's service area, training needs, and existing emergency management plans and crisis response resources already available at private schools.

(b) *Maintenance of Effort.*

Section 9521 of the ESEA requires that LEAs may receive a grant only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

## 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: 1–301–470–1244. 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 84.184E.

You may also access the electronic version of the application at the following Web sites: *http://www.grants.gov* or *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

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 program contact person listed in this section.

The public can also obtain applications directly from the program office: Sara Strizzi, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E320, Washington, DC. 20202–6450. Telephone: (202) 708–4850 or by e-mail: *sara.strizzi@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.

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: April 6, 2007. Deadline for Transmittal of Applications: May 21, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, 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** in section VII of this notice.

Deadline for Intergovernmental Review: July 18, 2007.

4. *Intergovernmental Review:* This competition 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 additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Readiness and Emergency Management for Schools grant competition, CFDA Number 84.184E, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use 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.

You may access the electronic grant application for the Readiness and Emergency Management for Schools grant competition at *http://www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.184, not 84.184E).

Please note the following:

- Your participation in Grants.gov is voluntary.
- 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 date and time stamped. You 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 submit your application in paper format.

• If you submit your application electronically, 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).

• If you submit your application electronically, 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.

• 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 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 problems 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.184E), 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 84.184E), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.184E), 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

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

## 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:* If funded, you are expected to collect data on the key Government Performance and Results Act (GPRA) performance measures for this program and report those data to the Department in your interim performance report and final performance report. At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an interim report nine months after the award date. This report should provide the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. We may also require more frequent performance reports in accordance with 34 CFR 75.720(c).

4. *Performance Measures:* We have identified the following key GPRA performance measures for assessing the effectiveness of the Readiness and Emergency Management for Schools grant program: (1) The percentage of Emergency Management Grant sites that demonstrate they have increased the number of hazards addressed by the improved school emergency management plan as compared to the baseline plan; (2) The percentage of Emergency Management Grant sites that demonstrate improved knowledge of school/and or district emergency management policies and procedures by school staff with responsibility for emergency management functions; and (3) The percentage of Emergency Management Grant sites that have a plan for, and commitment to, the sustainability and continuous improvement of the school emergency management plan by the district and community partners beyond the period of Federal financial assistance.

## VII. Agency Contact

*For Further Information Contact:* Sara Strizzi, U.S. Department of Education, 400 Maryland Ave., SW., room 3E320, Washington, DC 20202–6450. Telephone: (202) 708–4850 or by e-mail: *sara.strizzi@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.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/dvpemergencyresponse/index.html*

**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: April 3, 2007.

**Deborah A. Price,**

*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E7–6503 Filed 4–5–07; 8:45 am]

BILLING CODE 4000–01–P

# DEPARTMENT OF ENERGY

## Record of Decision, Orlando Gasification Project, Orlando, Orange County, FL

**AGENCY:** Department of Energy.

**ACTION:** Record of Decision.

**SUMMARY:** The Department of Energy (DOE) has prepared an environmental impact statement (EIS) (DOE/EIS–0383) to assess the environmental impacts associated with a proposed project that would be cost-shared by DOE and Southern Company (in partnership with the Orlando Utilities Commission) (OUC) under DOE's Clean Coal Power Initiative (CCPI) program. The project would demonstrate advanced power generation systems using Integrated Gasification Combined Cycle (IGCC) technology at OUC's existing Stanton Energy Center near Orlando, Florida. After careful consideration of the potential environmental impacts, along with program goals and objectives, DOE has decided that it will provide, through a cooperative agreement with Southern Company, a total of $235 million in cost-shared funding (about 41% of the total cost of approximately $569 million) to design, construct, and demonstrate the Orlando Gasification Project proposed by Southern Company.

**ADDRESSES:** The final EIS is available on the DOE NEPA Web site at *http://www.eh.doe.gov/nepa/documentspub.html* and on the DOE National Energy Technology Laboratory

Web site at *http://www.netl.doe.gov/technologies/coalpower/cctc/EIS/eis_orlando.html,* and the Record of Decision (ROD) will be available on both Web sites in the near future. Copies of the final EIS and this ROD may be requested by contacting Mr. Richard A. Hargis, Jr., National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940; telephone: 412–386–6065; or e-mail: *Richard.Hargis@netl.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information about the project or the EIS, contact Mr. Richard A. Hargis, Jr., National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940; telephone: 412–386–6065; or e-mail: *Richard.Hargis@netl.doe.gov.* For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0103; telephone: 202–586–4600; or leave a toll-free message at 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:** DOE has prepared this ROD pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA [40 Code of Federal Regulations (CFR) Parts 1500–1508] and DOE NEPA regulations (10 CFR Part 1021). This ROD is based on DOE's final EIS for the Orlando Gasification Project (DOE/EIS–0383, January 2007).

## Background and Purpose and Need for Agency Action

In 2002, the U.S. Congress established the CCPI program to accelerate commercial deployment of advanced coal-based technologies for generating clean, reliable, and affordable electricity in the United States. Congress indicated that projects in the program should be industry enterprises assisted by the government and not government-directed demonstrations. These projects are expected to showcase technologies in which coal-fired power plants can continue to generate low cost electricity with improved efficiency and comply with more stringent environmental standards expected in the future.

DOE issued the second-round CCPI solicitation in February 2004 and received 13 proposals in June 2004. The Orlando Gasification Project (''Orlando Project'') was one of four projects selected in October 2004 for further consideration. Evaluation criteria used in the selection process included technical merit of the proposed technology, potential for a successful demonstration of the technology, and potential for the technology to be commercialized. DOE also considered the participant's funding and financial proposal; DOE budget constraints; environmental, health, and safety implications; and program policy factors, such as DOE's preference for projects that represent a diversity of technologies, utilize a broad range of U.S. coals, and represent a broad geographical cross-section of the United States.

DOE selected the Orlando Project for further consideration in view of two principal needs. First, the project would meet the Congressional mandate to demonstrate advanced coal-based technologies that can generate clean, reliable, and affordable electricity in the United States. Second, the demonstration would provide a more cost-effective fuel supply for integration with a privately funded combined-cycle unit to generate electricity.

More specifically, the Orlando Project could demonstrate advanced coal gasification for power generation applications using IGCC technology at a sufficiently large scale to allow industries and utilities to assess the project's potential for commercial application. A successful demonstration would confirm that the technology could be implemented at the commercial scale. The cost-shared contribution by DOE would help reduce the risk to the Southern Company team in demonstrating the technology at the level of maturity needed for decisions on commercialization.

Further, the transport gasifier technology that would be demonstrated offers a simpler method for generating power from coal than other alternatives. It is unique among coal gasification technologies in that it is cost-effective when handling low rank coals and when using coals with high moisture or high ash content. These coals make up half the proven reserves in both the U.S. and the world. Moreover, the transport gasifier is capable of both air- and oxygen-blown operation. This inherent flexibility will allow it to readily adapt to other applications beyond power generation including chemical production and possible future carbon management requirements.

## EIS Process

On August 11, 2005, DOE published in the **Federal Register** (70 FR 46825) a Notice of Intent (NOI) to prepare the EIS and hold a public scoping meeting. DOE held a public scoping meeting in Orlando, Florida, on August 30, 2005. DOE received 11 oral responses at the public scoping meeting and 11 responses by comment card, mail, e-mail, and telephone from members of the public, interested groups, and Federal, state, and local officials. The responses assisted in establishing additional issues to be analyzed in the EIS and in determining the level of analysis warranted for each issue.

On August 24, 2006, DOE published in the **Federal Register** (71 FR 50051) a Notice of Availability for the Orlando Gasification Project draft EIS. The Notice of Availability invited comments on the draft EIS and participation in the NEPA process. As part of the review process, DOE conducted a public hearing on September 13, 2006, in Orlando, Florida. DOE also conducted an informational session prior to the hearing for the public to learn more about the proposed project. The public was encouraged to provide oral comments at the hearings and to submit written comments to DOE during a 45-day public comment period that ended October 10, 2006. DOE received oral comments from two individuals at the public hearing, and written comments from three individuals, one non-governmental organization, two Federal agencies, and one local agency during and after the public hearing.

In January 2007, DOE issued the final EIS and the Environmental Protection Agency (EPA) published a Notice of Availability of the final EIS in the **Federal Register** on January 26, 2007 (72 FR 3846). In the final EIS, DOE considered and, as appropriate, responded to public comments on the draft EIS. Among the issues raised in the comments on the draft EIS were concerns about (1) Carbon dioxide ($CO_2$) emissions and mitigation options; (2) vehicle and rail traffic; (3) mercury deposition and bioaccumulation; (4) ambient concentrations of ozone; (5) environmental justice considerations; and (6) air toxics impacts.

## Project Location and Description

The Orlando Project would be located at OUC's existing 3,280-acre Stanton Energy Center in eastern Orange County, approximately 3 miles east of the eastern city limits of Orlando, Florida, and about 13 miles east-southeast of downtown Orlando. The topography of the area is relatively flat. The new

facilities would be constructed on approximately 35 of the 1,100 acres of land that were previously cleared, leveled, and licensed for power plant use. The project equipment would be located between existing coal-fired units and an existing natural gas-fired combined-cycle unit. A short transmission line (approximately 3,200 ft in length), proposed to serve as an electrical interconnection from the proposed facilities to an existing onsite substation, would occupy a small amount of additional land. Land use in the vicinity includes undeveloped areas interspersed with a mixture of residential and commercial buildings, as well as a park, correctional facility, and landfill.

Construction would begin in late 2007 and continue until early 2010. An average of about 350 construction workers would be on the site during construction. Approximately 600 to 700 workers would be required during the peak construction period between fall 2008 and spring 2009. After mechanical checkout of the proposed facilities, demonstration (including data analysis and process evaluation) would be conducted over a 4.5-year period from mid 2010 until late 2014.

If the demonstration is successful, commercial operation would follow immediately. The combined workforce (*i.e.*, including the Orlando Gasification Project and the combined-cycle generating unit) would consist of approximately 72 employees added to the existing Stanton Energy Center staff of 204 employees. Of the 72 new employees, 19 workers would provide support only during the startup and demonstration phases of the project, while 53 employees would be needed over the lifetime of the facilities. The facilities would be designed for a lifetime of at least 20 years, including the 4.5-year demonstration period.

The new coal gasifier would operate entirely on coal, consuming a total of approximately 1,020,000 tons per year to produce synthesis gas. Two to three trains per week would deliver low-sulfur subbituminous coal from the Powder River Basin in Wyoming. The heating value of the coal would average about 8,760 Btu/lb and the sulfur content would average about 0.26%. Most air emissions would result from combustion of synthesis gas in the gas combustion turbine during normal operations. The exhaust gas would be released to the atmosphere via a 205-ft stack.

**Alternatives**

Congress directed DOE to pursue the goals of the CCPI Program by means of partial funding of projects owned and controlled by non-Federal sponsors. This statutory requirement places DOE in a much more limited role than if the Federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant under the CCPI Program, DOE must focus on alternative ways to accomplish CCPI's purpose that reflect both the application before it and the role DOE plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the applicant's desires in establishing a project's reasonable alternatives.

Based on the foregoing principles, the only reasonable alternative here to the proposed action was the no-action alternative, including one scenario that could reasonably be expected to result as a consequence of the no-action alternative. DOE dismissed from further consideration other alternatives that did not meet the goals and objectives of the CCPI Program or of the applicant.

The Stanton Energy Center was the only location identified in Southern's CCPI proposal. It is an existing site at which the private partners have already established a business relationship. Because it is an existing site, DOE concluded that it would be preferable to any undeveloped location.

DOE considered alternative technologies but dismissed them as unreasonable. Technologies and approaches that did not involve the use of coal (*e.g.*, natural gas, wind power, solar energy, and conservation) would not contribute to the CCPI Program goal of accelerating commercial deployment of advanced coal-based technologies. Other alternatives, such as reducing the size of the proposed project, were dismissed as unreasonable. The design size for the proposed project was selected because it is sufficiently large to show potential customers that the gasification technology, once demonstrated at this scale, could be applied commercially without further scale-up. The size of the proposed project is also related to OUC's projected need for power.

**Proposed Action**

The proposed action is for DOE to provide Southern Company a total of $235 million in cost-shared funding to design, construct, and demonstrate the Orlando Project. A portion ($13.762 million) of this funding has already been provided for activities in the first budget period, such as project definition, front-end engineering design, environmental permitting activities, and preparation of environmental information for NEPA analysis.

Although DOE funding would support only the Orlando Project (*i.e.*, coal gasifier, synthesis gas cleanup systems, and supporting infrastructure), the Orlando Project would be integrated with a privately funded, combined-cycle unit, which together would constitute the IGCC facilities. The IGCC facilities would convert coal into synthesis gas to drive a gas combustion turbine, and hot exhaust gas from the gas turbine would generate steam from water to drive a steam turbine. Combined, the two turbines would generate 285 MW (megawatts) of electricity. This proven, reliable combined-cycle approach of using a gas turbine and steam turbine in tandem increases the amount of electricity that can be generated from a given amount of fuel. The IGCC facilities are expected to provide a source of electricity that is reliable, low cost, environmentally sound, and efficient. DOE expects that approximately 40% of the energy in the fuel would be converted to electricity compared to about 33% for conventional coal-fired power plants. The IGCC facilities would substantially reduce emissions of sulfur dioxide ($SO_2$), oxides of nitrogen ($NO_X$), and mercury relative to existing, conventional coal-fired power plants.

**No-Action Alternative**

Under the no-action alternative, DOE would not provide cost-shared funding for the design, construction, and demonstration of the proposed Orlando Project at OUC's Stanton Energy Center near Orlando, Florida. Based on information from the private partners, without DOE participation, Southern Company and/or OUC could reasonably be expected to pursue at least one option (*i.e.*, the combined-cycle facilities would be built at the Stanton Energy Center and operated using natural gas as fuel, without the gasifier, synthesis gas cleanup systems, and supporting infrastructure). Accordingly, DOE analyzed a no-action alternative scenario in which combined-cycle facilities would operate using natural gas as fuel without the availability of synthesis gas. Under the no-action alternative, commercialization of the gasification facilities (alone or integrated with the combined-cycle facilities to form IGCC technology) would probably not occur because utilities and industries tend to use known and demonstrated technologies rather than unproven technologies.

**Potential Environmental Impacts and Mitigation Measures**

In making its decision, DOE considered the environmental impacts of the proposed action and the no-action alternative on potentially affected environmental resource areas. These include: land use and aesthetics, atmospheric resources and air quality, geology and soils, water resources, floodplains and wetlands, ecological resources, social and economic resources (including environmental justice and cultural resources), waste management, human health and safety, noise, and transportation. While the proposed project consists of only the gasifier, synthesis gas cleanup systems, and supporting infrastructure, the EIS includes the combined-cycle generating unit in the analysis of environmental impacts because the facilities are operationally interdependent. The EIS considers the impacts from these facilities combined with those from other, existing facilities at the Stanton Energy Center, and also examines potential incremental impacts of the project in combination with other past, present and reasonably foreseeable future actions *(i.e., cumulative impacts)*. The following sections provide key findings for areas of potential concern.

**Land Use and Aesthetics**

The Orlando Project would be confined to the existing Stanton Energy Center site and thus would not directly affect offsite land use. The 1,100-acre developed portion of the power plant site is already zoned specifically for power generation through the site certification process under the Florida Electrical Power Plant Siting Act. The tallest new structures would be the 205-ft heat recovery steam generator (HRSG) stack, the 174-ft structure to house the gasifier, and the 114-ft HRSG. These structures would be shorter than the existing two 550-ft stacks serving two boiler buildings. Aesthetic impacts would be reduced because the facilities would be located between existing facilities, appearing as part of the site.

Under the no-action alternative, offsite land use would be the same, but because the 174-ft structure to house the gasifier would not be required, aesthetic impacts would be less than those predicted under the proposed action.

**Air Resources**

Modeling results based on emissions from the Orlando Project predicted that maximum concentrations would be less than their corresponding ''significant impact levels.'' (Under EPA guidelines, if maximum predicted concentrations are less than ''significant impact levels,'' then no further modeling for regulatory purposes is required.) Modeling results also predicted that, combined with ambient background concentrations, pollutant concentrations from Orlando Project emissions would be less than corresponding ambient air quality standards. Concentrations would be negligible at the nearest Prevention of Significant Deterioration (PSD) Class I area about 90 miles to the west-northwest. (Class I areas are designated areas in which the degradation of air quality is to be severely restricted.) Annual $NO_X$ emissions from the Stanton Energy Center overall would not be expected to increase because, as part of the air permitting process, OUC has agreed to reduce $NO_X$ emissions from other units at the Stanton Energy Center so that there would be a net decrease in $NO_X$ emissions. Annual emissions of volatile organic compounds (VOCs), a precursor of the criteria pollutant ozone, would be 129 tons. The small percentage increase in VOC emissions (approximately 0.3% of the Orange County 2001 emission inventory) would not be likely to degrade air quality sufficiently to cause violations of the ozone standard, but the magnitude of the degradation cannot be quantified. The maximum ambient 24-hour concentration of mercury from the proposed HRSG stack is predicted to be 0.8% of its corresponding guideline value, and the maximum ambient 24-hour concentration of beryllium from the stack is predicted to be 0.4% of its guideline value. These results indicate that mercury and beryllium emissions from the proposed facilities alone or in combination with other sources would pose no threat to human health in the area. Any potential odors would be limited to the immediate site area and would not affect offsite areas. Increases in $CO_2$ emissions from the proposed facilities would add 1.8 million tons per year to an estimated global emission of 26,000 million tons per year.

The proposed project would significantly reduce additional $SO_2$, $NO_X$, mercury, and particulate emissions by removing constituents from the synthesis gas. The removal of approximately 80% of the fuel-bound nitrogen from the synthesis gas prior to combustion in the gas turbine would result in appreciably lower $NO_X$ emissions compared to existing, conventional coal-fired power plants. The project is expected to remove up to 95% of sulfur and over 90% of mercury emissions. Over 99.9% of particulate emissions would be removed.

During operation, a number of means would be employed to reduce emissions of air pollutants, including: (1) Application of Best Available Control Technology; (2) enclosure of coal unloading, transfer, and conveying equipment, plus application of water sprays, as needed, and use of baghouses at key transfer points; (3) use of high temperature, high pressure filters within the gasification process to collect particulate matter from the synthesis gas; (4) use of gas cleanup technology to reduce sulfur concentrations in the synthesis gas; and (5) use of activated carbon to remove mercury from the synthesis gas.

Southern would monitor to ensure emissions compliance. DOE expects the proposed facilities to be subject to the Clean Air Interstate Rule, Clean Air Mercury Rule, applicable New Source Performance Standards, and 40 CFR Part 75 (Acid Rain Program). In general, these Federal rules require continuous monitoring and recording of $SO_2$, $NO_X$, and mercury emissions. Monitoring would be subject to stringent quality assurance and control requirements to ensure that the monitored emissions data are accurate and complete.

Southern would conduct initial and periodic compliance testing pursuant to Florida Department of Environmental Protection requirements. This stack testing, using EPA reference methods, is expected to address the principal air pollutants emitted by the proposed facilities, including carbon monoxide, VOCs, and particulate matter.

Approximately 25% less $CO_2$ would be produced per unit of power generated compared to typical emission rates at existing, conventional coal-fired power plants. However, there would be a net increase in global emissions of $CO_2$. For this project, mitigation, such as capture and sequestration, is not feasible because the planned sulfur removal technology would not generate a concentrated $CO_2$ stream. However, even if the facilities were to generate a concentrated $CO_2$ stream, the nearest location amenable to $CO_2$ sequestration options that have been demonstrated at the scale needed (*i.e.*, enhanced oil recovery) would be hundreds of miles away. The feasibility and effectiveness of other sequestration options, such as injection into saline formations, are not promising for this area and have not been fully characterized. Sequestration options for all regions of the country are still under investigation in DOE's Carbon Sequestration Program. A program goal is to initiate at least one large-scale demonstration, at the scale required for a power plant, in 2009 to demonstrate the appropriateness for $CO_2$ injectivity and validate storage capacity estimates and permanence.

Under the no-action alternative, emissions of air pollutants would be less than those predicted for the new facilities. Also, because the flare would not be required, no occasional emissions from a flare would occur.

**Water Resources**

Because construction would occur in developed site areas where surface water runoff is directed to onsite stormwater retention ponds and is used in the facilities, no impacts to natural surface waters would be experienced, except in the unlikely event of a major storm that caused overflow of the site stormwater collection system. Transmission line construction outside the main plant area could result in soil erosion and sediment deposition to streams, but best management practices described below would minimize erosion and sedimentation. Impacts from lowering the water table during dewatering would be inconsequential.

Because operation of the facilities would not withdraw surface water or discharge liquid effluent, surface waters would experience no direct impacts. The Stanton Energy Center's use of reclaimed water would increase by an average of 2.1 million gallons per day (from 10.2 million to about 12.3 million gallons per day), thus reducing by a similar amount the water volume discharged to the wetlands downstream from the Eastern Water Reclamation Facility and from those wetlands to the Econlockhatchee River. Because this surface water is not used, reduced flow would not affect water users. Water quality in the river could be affected if reduced streamflow also reduced the river's capacity to dilute contamination discharged from other parts of the watershed, however any such effects would be temporary. Increased groundwater withdrawals would not produce discernible impacts. Facility operation could add localized contamination to shallow groundwater from the possible placement of additional waste in the onsite ash landfill. Because any contamination would be limited to the shallow aquifer and any contaminated groundwater would be designed to discharge to onsite stormwater collection systems, impacts to water users are unlikely.

The new coal pile would be lined and leachate collected to prevent the introduction of pollutants into groundwater. Use of treated wastewater effluent and other reclaimed water for cooling water makeup would minimize the withdrawal and consumption of Floridan aquifer groundwater. Measurement programs specified in the Stanton Energy Center Conditions of Certification would ensure continued monitoring of groundwater withdrawal rates from the Upper Floridan aquifer. In the unlikely event of a fuel spill or other release, assessment and recovery would be conducted in accordance with Florida Department of Environmental Protection requirements.

Runoff during construction and operation, as well as all effluents from operation, would flow through the existing Stanton Energy Center collection and reuse system. No offsite discharges would occur, except during a major storm event. Site-specific Best Management Practices to prevent the deposition of sediments beyond the construction areas would include silt fences, hay bales, vegetative covers, and diversions, to reduce impacts to surface water. No process wastewater would be directly discharged to any surface waters, but would be reused.

Under the no-action alternative, cooling water requirements would be about 20% less than under the proposed action. Releases to wetlands downstream from the Orange County Eastern Water Reclamation Facility and from the wetlands to the Econlockhatchee River would be reduced by 20%, and use of groundwater would be the same as under the proposed action.

**Floodplains and Wetlands**

No floodplains would be affected by the Orlando Project because no construction would occur within a floodplain. During construction, wetland and other vegetation communities within the transmission corridor would be altered. Because tall-growing vegetation would be cut and kept at a height low enough to prevent interference with the conductors, forest cover habitats would be reduced and shrub or other low-growing vegetation would eventually dominate the corridor. Construction of the transmission line would require submittal of a joint (1) Army Corps of Engineers Section 404 dredge-and-fill wetlands application and (2) Florida Department of Environmental Protection environmental resource permit. This permitting process would also require OUC to commit to a mitigation plan for any unavoidable wetland impacts. The net effect of clearing and maintaining 3.95 acres of wetland habitat for the transmission line would be (1) Loss of 1.04 acres of wetland due to fill and (2) modification of vegetation in wetlands in the remainder of the corridor due to right-of-way maintenance. This would shift, to a small extent, the balance of wildlife habitat in the area away from wetland and forest toward shrub and brushland. To mitigate impacts to the wetland area, OUC would purchase credits at a local mitigation bank. The total number of acres required to mitigate the wetlands impacts would be determined after deliberations between the Florida Department of Environmental Protection, the St. John's River Water Management District, and the Army Corps of Engineers.

Under the no-action alternative, no floodplains would be affected and, because the new transmission line would still be required, the same alteration of wetland and other vegetation communities within the transmission corridor would be experienced.

**Ecological Resources**

The land where the Orlando Project would be constructed is not important habitat for wildlife, and no areas of ecological sensitivity would be affected directly. Wildlife species would be affected by construction activities and resultant loss of habitat in the transmission corridor. Smaller less mobile animals would be at greatest risk, whereas larger more mobile animals would likely move from the disturbed areas and increase surrounding habitat use. No Federally-listed threatened or endangered plant species are known to occur within the immediate vicinity of the main proposed facilities or the transmission corridor. Five plant species protected by the Florida Department of Agriculture and Consumer Services are known to occur along or in the vicinity of the transmission corridor. Clearing and maintenance activities on the right-of-way would be expected to destroy some individual plants, but populations would persist in undisturbed areas. Other than transient or incidental use by some wildlife species, no federally-listed threatened or endangered animal species are found within the previously cleared 1,100 acres. Except for the five protected plants, no direct impacts are expected to listed species from proposed construction and operations. The site contains no appreciable natural aquatic resources.

Impacts under the no-action alternative would be the same as for the proposed facilities.

**Social and Economic Resources**

Construction and operation of the Orlando Project would not result in major impacts to population, housing, local government revenues, or most public services in Orange County. However, because the county's public schools are already above capacity, even the small increase in the number of

students as a consequence of the new facilities would contribute to overcrowding. Overall, construction and operation of the proposed facilities would have positive effects on employment and income in the region.

The relatively large minority populations in and around the census tract in which the Stanton Energy Center is located (Census Tract 167.22) represent ''environmental justice'' populations to which adverse impacts could be distributed disproportionately. However, impacts to land use and aesthetics would not be significant for the population as a whole and would not contribute to disproportionately high and adverse impacts. Likewise, with regard to health effects and noise, there would be no significant adverse impacts to the population as a whole, and no disproportionately high and adverse effects would be experienced.

Under the no-action alternative, the peak and average construction work force would be reduced, and the construction period would be cut from 28 months to 24 months. Fewer operational workers would be required (21 rather than 72). Positive economic benefits would also be less.

**Waste Management**

The Orange County Sanitary Landfill would have ample capacity to receive project construction wastes. Ash generated by the Orlando Project is being evaluated for several possible beneficial uses that could avoid disposal in the onsite landfill. If no beneficial use is found, the 347-acre dedicated landfill would provide more than enough space to dispose of this ash, as well as other coal combustion wastes generated by the Stanton Energy Center. The existing generating units would use the anhydrous ammonia produced by the new facilities to satisfy their requirements, and any excess would be sold commercially. If the elemental sulfur generated by the facilities proves to be as pure as it is projected to be, it would be sold commercially. Otherwise, it would be placed in the onsite landfill. Elemental sulfur would not be a hazardous waste, and the quantity produced would be small in comparison with the total capacity of the landfill.

Under the no-action alternative, the quantities of construction wastes would be slightly less. Also, because no ash would be generated, no disposal sites would be needed to accommodate ash. No anhydrous ammonia or elemental sulfur would be produced.

**Human Health and Safety**

Minimal adverse impacts to human health would be expected from operational $SO_2$, $NO_X$, and particulate matter emissions from the new facilities. With regard to health effects of hazardous air pollutants, the Orlando Project would pose less risk than most existing plants, many of which were built decades ago. A health risk analysis of hazardous air pollutants from the proposed facilities estimated that concentrations of all hazardous air pollutants would be below the threshold concentrations (below harmful levels).

A catastrophic accident (*e.g.*, a significant hazardous material release, fire, or explosion) associated with the facilities, including transportation of anhydrous ammonia off the site, would be unlikely.

Southern Company and OUC would add project specific health and safety-related plans to those already in place for existing Stanton Energy Center units to prevent or minimize potential adverse impacts. These measures would include appropriate training and supervision of employees and enforcement of workplace safety policies.

Southern Company and OUC would develop and implement a safety program for the chlorine and ammonia systems that would include emergency response measures as well as specify training protocols.

Excess ammonia generated at the proposed facilities would be handled and transported according to the Department of Transportation's hazardous materials regulations.

Because emissions of air pollutants would be less under the no-action alternative, adverse impacts to human health would be less.

**Noise**

During operation of the proposed facilities, the predicted noise level at the nearest residence (about 6,500 ft to the northeast) would be 46.5 dBA. No adverse community reaction would be expected as a result of noise levels below 50 dBA. Noise from infrequent steam blows would attenuate to a level of about 66 dBA at the nearest property boundary and 60 dBA at the nearest residence. A level of 60 dBA would be typical of normal conversation.

Noise would be essentially the same under the no-action alternative.

**Transportation**

Much of the work on planned road projects could coincide with construction and operation of the new facilities, creating a major cumulative impact to traffic flow on the local road network. This impact would be reduced if the Avalon Park Boulevard extension is completed in mid-2008 before the peak construction period. Also, Southern Company and OUC have committed to a number of measures that would mitigate these potential traffic impacts. A construction traffic impact mitigation program, which is required by the Stanton Energy Center Conditions of Certification, would be developed and implemented. Such a program could include encouraging construction workers to carpool; working with the local mass-transit system to provide workers with a park-and-ride service to the site; using the existing railway access to the Stanton Energy Center site for the delivery of some construction equipment and materials; staggering construction work schedules and shifts to avoid peak traffic hours; and working with the Florida Department of Transportation to provide temporary traffic control devices and alter signal times to assist in maintaining proper traffic flow. If the Avalon Park Boulevard extension project is completed prior to project construction, traffic issues would largely be mitigated and more modest mitigation could be considered. However, DOE acknowledges that these mitigation steps would not completely eliminate traffic impacts.

Noise related to transportation would not be expected to be significant. At the nearest residence, noise levels from truck traffic on Alafaya Trail would be at about the same level as that of a quiet subdivision during daylight hours. Noise levels from current rail traffic have not caused any public complaints. Increased rail traffic due to the proposed project would result in more frequent noise from rail traffic, but the noise levels would be the same.

Traffic congestion would be less under the no-action alternative. No additional trains would be needed to deliver coal, but trucks would continue to deliver anhydrous ammonia to the site once per week. Noise levels associated with transportation would be the same as for the new facilities but would be less frequent.

**Environmentally Preferred Alternative**

The no-action alternative is environmentally preferable because it would result in slightly less impacts than those predicted for the proposed action.

**Comments Received on the Final EIS**

The only comments that DOE received on the final EIS were from the U.S. Environmental Protection Agency (EPA), Region 4, NEPA Program Office. EPA stated that the final EIS was responsive to their comments on the draft EIS, but observed that direct,

indirect, and cumulative impacts are inherent in projects that generate power. Therefore, EPA stated that verification of the impacts on air quality, wetlands, hazardous waste, and cumulative impacts will need to take place as the project progresses, with appropriate avoidance and mitigation measures implemented. DOE anticipated verifying impacts through an environmental monitoring plan. This plan will be developed as part of the cooperative agreement with Southern Company, and reports on monitoring activities will be included in the reports required under the cooperative agreement.

EPA also expressed appreciation of DOE's consideration of diesel retrofit technology to minimize emissions from construction equipment. As stated in the final EIS, specification of the use of diesel retrofit technologies is not warranted since impacts from diesel engines during construction are not expected to be a concern. However, DOE will encourage Southern Company to consider the use of biodiesel and diesel retrofit technologies during construction activities to further reduce impacts.

**Decision**

DOE will implement the proposed action, providing, through a cooperative agreement with Southern Company, a total of $235 million in cost-shared funding to design, construct, and demonstrate the Orlando Gasification Project.

DOE's decision was made upon careful review of the potential environmental impacts, presented in the EIS, and incorporates all practicable means to avoid or minimize environmental harm. DOE plans to verify the environmental impacts predicted in the EIS and the implementation of appropriate avoidance and mitigation measures.

Issued in Washington, DC on this 28th day of March 2007.

**James A. Slutz,**

*Acting Assistant Secretary for Fossil Energy.*

[FR Doc. E7–6435 Filed 4–5–07; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER07–528–000]**

### Brookfield Energy Marketing U.S. LLC; Notice of Issuance of Order

April 2, 2007.

Brookfield Energy Marketing U.S. LLC (Brookfield) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Brookfield also requested waivers of various Commission regulations. In particular, Brookfield requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Brookfield.

On March 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Brookfield should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 30, 2007.

Absent a request to be heard in opposition by the deadline above, Brookfield is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Brookfield, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Brookfield's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6439 Filed 4–5–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER07–589–000]**

### Citigroup Energy Canada ULC; Notice of Issuance of Order

April 2, 2007.

Citigroup Energy Canada ULC (CECU) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. CECU also requested waivers of various Commission regulations. In particular, CECU requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CECU.

On March 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by CECU should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 30, 2007.

Absent a request to be heard in opposition by the deadline above, CECU is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CECU, compatible with the public interest, and

is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of CECU's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6440 Filed 4–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER07–486–000; ER07–486–001]**

### Saguaro Power Company, A Limited Partnership; Notice of Issuance of Order

April 2, 2007.

Saguaro Power Company, A Limited Partnership (Saguaro Power) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provide for the sale of energy and capacity at market-based rates. Saguaro Power also requested waivers of various Commission regulations. In particular, Saguaro Powerrequested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Saguaro Power.

On March 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Saguaro Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 30, 2007.

Absent a request to be heard in opposition by the deadline above, Saguaro Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Saguaro Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Saguaro Power's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6438 Filed 4–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

April 2, 2007.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC07–73–000.

*Applicants:* STI Capital Company; Pedricktown Plant Holdings, LLC.

*Description:* STI Capital Company and Pedricktown Plant Holdings submit an application for authorization to dispose of jurisdictional facilities.

*Filed Date:* 03/28/2007.

*Accession Number:* 20070330–0023.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 18, 2007.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER97–4281–016; ER99–2161–007; ER99–3000–006; ER02–1572–004; ER02–1571–004; ER99–1115–011; ER99–1116–011; ER00–2810–005; ER99–4359–004; ER99–4358–004; ER99–2168–007; ER98–1127–011; ER07–649–001; ER99–2162–007; ER00–2807–005; ER00–2809–005; ER98–1796–010; ER00–1259–006; ER99–4355–004; ER99–4356–004; ER00–3160–006; ER99–4357–004; ER00–3160–006; ER00–2313–006; ER02–2/–004; ER02–1396–004; ER02–1412–004; ER00–3718–005; ER99–3637–005; ER07–486–002; ER99–1712–007; ER00–2808–006.

*Applicants:* NRG Power Marketing, Inc.; Arthur Kill Power LLC; Astoria Gas Turbines Power LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; Conemaugh Power LLC; Connecticut Jet Power LLC; Devon Power LLC; Dunkirk Power LLC; El Segundo Power, LLC; El Segundo Power II LLC; Huntley Power LLC; Indian River Power LLC; Keystone Power LLC; Long Beach Generation LLC; Louisiana Generating LLC; Middletown Power LLC; Montville Power LLC; NEO Freehold-Gen LLC; Norwalk Power LLC; NRG Energy Center Dover LLC; NRG Energy Center Paxton LLC; NRG New Jersey Energy Sales LLC; NRG Rockford LLC; NRG Rockford II LLC; NRG Sterlington Power LLC; Oswego Harbor Power LLC; Saguaro Power Company, A Limited Partnership; Somerset Power LLC; Vienna Power LLC

*Description:* NRG Power Marketing, Inc and thirty-one affiliates most of which own generating facilities submit a triennial market power update and notice of change in status.

*Filed Date:* 03/26/2007.

*Accession Number:* 20070330–0022.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 16, 2007.

*Docket Numbers:* ER99–2342–010.

*Applicants:* Tampa Electric Company.

*Description:* Tampa Electric Company submits a refund report.

*Filed Date:* 03/19/2007.

*Accession Number:* 20070319–5044.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 09, 2007.

*Docket Numbers:* ER02–488–006.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc submits an amendment to its 2/12/07 submittal, proposed revisions to the Operating Protocol for Existing Generators, First Revised Rate Schedule 4.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0078.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER06–275–002.
*Applicants:* Northeast Utilities Service Company.
*Description:* Connecticut Light and Power Company et al. submit a supplemental filing providing back-up data detailing the actual CWIP and AFUDC monthly balances etc. in response to FERC's directives and its (2006) Order.
*Filed Date:* 03/16/2007.
*Accession Number:* 20070330–0020.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 06, 2007.

*Docket Numbers:* ER07–516–001.
*Applicants:* Morgan Stanley Capital Group Inc.
*Description:* Morgan Stanley Capital Group Inc submits an amended report and declaration regarding a bilateral spot transaction for which MSCG was the seller in the Western Electricity Coordinating Council region.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0092.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07–529–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc submits a Substitute Fourth Revised Sheet 7 et al. to FERC Electric Tariff, Third Revised Volume 1 pursuant to section 205 of the FPA.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0068.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07–656–001.
*Applicants:* CMT Fund IX LLC.
*Description:* CMT Fund IX LLC submits an amended Original Sheet 1 et al. to its FERC Electric Rate Schedule.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0077.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 9, 2007.

*Docket Numbers:* ER07–669–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Tariff and Open Access Transmission Tariff etc.
*Filed Date:* 03/28/2007.
*Accession Number:* 20070330–0025.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 18, 2007.

*Docket Numbers:* ER07–673–000.
*Applicants:* Reliant Energy Wholesale Generation, LLC.
*Description:* Reliant Energy Wholesale Generation, LLC submits a proposed FERC Electric Tariff, Original Volume 7 and supporting cost data etc.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070330–0125.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07–674–000.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Wisconsin Electric Power Company submits a Notice of Cancellation of its Master Close-Out Netting Agreement with Southern Company Energy Marketing, Rate Schedule No. 95.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070402–0037.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* ER07–675–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection LLC submits an executed interconnection service agreement with Allegheny Ridge Wind Farm LLC et al. and a notice of cancellation for an interconnection service agreement etc.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0038.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07–676–000.
*Applicants:* Tampa Electric Company.
*Description:* Tampa Electric Company submits a Third Revised Sheet 121 for inclusion in its open access transmission tariff pursuant to section 205 of the FPA etc.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0039.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07–677–000.
*Applicants:* Sierra Pacific Power Company.
*Description:* Sierra Pacific Power Company submits an amendment to a Power Purchase Agreement w/ Nevada Power Company pursuant to sections 205 (c) & (d) of the FPA etc.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0131.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07–678–000.
*Applicants:* Nevada Power Company.
*Description:* Nevada Power Company submits its amendments to two Power Purchase Agreements with Sierra Power Company.
*Filed Date:* 03/29/2007.
*Accession Number:* 20070402–0051.
*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07–679–000.
*Applicants:* Public Service Company of New Mexico.
*Description:* Public Service Company of New Mexico submits Substitute Sheet 207 et al. to FERC Electric Tariff, Original Volume 6.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070402–0070.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07–21–000.
*Applicants:* CMS (India) Operations and Maintenance Company Private Limited.
*Description:* CMS (India) Operations and Maintenance Company Private Limited submits a notification of Self-Certification of Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5017.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–22–000.
*Applicants:* CMS International Operating Company.
*Description:* CMS International Operating Company submits a notice of Self-Certification of Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5018.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–23–000.
*Applicants:* ST-CMS Electric Company Private Limited.
*Description:* ST-CMS Electric Company Private Limited submits a Notice of Self-Certification of Foreign Utility.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5022.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–24–000.
*Applicants:* Jorf Lasfar Energy Company SCA.
*Description:* Jorf Lasfar Energy Co SCA submits a notice of Self-Certification of Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5025.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–25–000.
*Applicants:* Shuweihat O&M Limited Partnership.
*Description:* Shuweihat O&M Limited Partnership submits a notice of Self-Certification of Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5027.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–26–000.
*Applicants:* Jubail Energy Company.
*Description:* Jubail Energy Company submits a notice of Self-Certification of Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5031.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–27–000.
*Applicants:* CMS Morocco Operating Company SCA.
*Description:* CMS Morocco Operating Co SCA submits a notice of Self-Certification of Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5034.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–28–000.
*Applicants:* Shuweihat CMS International Power Company.
*Description:* Shuweihat CMS International Power Company submits a notice of Self-Certification Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5037.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

*Docket Numbers:* FC07–29–000.
*Applicants:* Takoradi International Company.
*Description:* Takoradi International Company submits a notice of Self-Certification of Foreign Utility Company Status.
*Filed Date:* 03/30/2007.
*Accession Number:* 20070330–5040.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 20, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Philis J. Posey,**
*Acting Secretary.*
[FR Doc. E7–6432 Filed 4–5–07; 8:45 am]
**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD07–3–007]**

### Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Fiscal Year 2006 Other Federal Agency Cost Submissions

April 2, 2007.

In its Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures (109 FERC ¶ 61,040), the Commission set forth an annual deadline for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. The Commission required the OFAs to submit their costs by December 31st of each fiscal year (FY) using the OFA Cost Submission Form. The order also announced that a technical conference would be held for the purpose of reviewing the submitted cost forms and detailed supporting documentation.

On March 29, 2007, the Commission held a technical conference to review the FY 2006 OFA cost submissions, which was attended by OFAs and licensees.

Within two weeks of the date of this notice, interested parties may file their specific questions and comments on the FY 2006 OFA cost submissions with the Commission under Docket No. AD07–3–007. Once filed, the Commission will forward the questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact Fannie Kingsberry at (202) 502–6108 (via e-mail at *fannie.kingsberry@ferc.gov*), or Norman Richardson at (202) 502–6219 (via e-mail at *norman.richardson@ferc.gov*).

**Philis J. Posey,**
*Acting Secretary.*
[FR Doc. E7–6436 Filed 4–5–07; 8:45 am]
**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1494–300—OK]**

### Grand River Dam Authority (GRDA); Notice of Availability of Draft Environmental Assessment

April 2, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects reviewed the application for non-project use of project lands and waters for the Pensacola Hydroelectric Project, located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma, and has prepared a Draft Environmental Assessment (DEA).

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket

number (P–1494) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed by May 1, 2007, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–1494) on all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Lesley Kordella at (202) 502–6406.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6442 Filed 4–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PF07–1–000]**

### Boardwalk Pipeline Partners, LP; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Gulf Crossing Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

April 2, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will identify and address the environmental impacts that could result from the construction and operation of the Gulf Crossing Project proposed by Gulf Crossing Pipeline Company, LLC (Gulf Crossing) and Gulf South Pipeline Company, L.P. (Gulf South).

In order to assist staff with the identification of environmental issues and to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), a thirty-day scoping period has been opened to receive comments on the proposed project. Please note that the scoping period for this project will close on May 4, 2007.

Additionally, as part of the scoping process, we will also hold four public meetings, as described below, to receive comments on the proposed project.

| Date and time | Location |
|---|---|
| April 23, 2007, 7 p.m. | Delhi High School Auditorium, 413 Main Street, Delhi, LA 71232. |
| April 24, 2007, 7 p.m. | Serepta High School Auditorium, 6041 Highway 2, Serepta, LA 71071. |
| April 25, 2007, 7 p.m. | Mt. Pleasant Civic Center, 1800 N. Jefferson, Mt. Pleasant, TX 75455. |
| April 26, 2007, 7 p.m. | Bryan County Free Fair, 1901 South 9th Street, Durant, OK 74702. |

This notice is being sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers; all of which are encouraged to submit comments on the proposed project. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a Boardwalk, Gulf Crossing or Gulf South representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

#### Summary of the Proposed Project

Boardwalk, through its subsidiary Gulf Crossing, proposes to construct, own and operate approximately 351 miles of new 42-inch-diameter natural gas transmission pipeline, four (4) new compressor stations, four (4) new metering and regulating (M&R) stations and associated facilities in Grayson, Fannin, Lamar, Red River, Franklin, Titus, Morris, and Cass Counties, Texas; Bryan County, Oklahoma; and Caddo, Bossier, Webster, Claiborne, Lincoln, Union, Ouchida, Morehouse, Richland, and Madison Parishes, Louisiana.

In addition, as part of the Gulf Crossing Project, Boardwalk, through its subsidiary Gulf South, proposed to construct, own and operate a 4.5-mile-long 42-inch-diamter pipeline loop (Loop A) in Madison Parish, Louisiana; and 11.2-mile-long 42-inch-diameter pipeline loop (Loop B) in Hinds, Copiah, and Simpson Counties, Mississippi; as well as installing an additional 30,000 horsepower (hp) of compression at the proposed Harrisville Compressor Station (Docket Number CP07–32–000).

The general location of the proposed pipeline is shown in the figure included as Appendix 1.[1]

Specifically, Boardwalk proposes to construct and operate the following facilities:

- Approximately 351 miles of 42-inch-diameter pipeline beginning in Sherman, Texas; northeast through Bennington, Oklahoma; and southeast to the proposed Gulf South Tallulah Compressor Station near Tallulah, Louisiana;
- Approximately 4.5-mile-long, 42-inch-diameter pipeline loop line west of the Mississippi River in Madison Parish, Louisiana;
- An approximately 11.2-mile-long, 42-inch-diamter pipeline loop line in Hinds, Copiah, and Simpson Counties, Mississippi that terminates at the Gulf South Harrisville Compressor Station (Proposed in Docket number CP07–32–000);
- A new 35,641 hp compressor station at Milepost (MP) 0.0 near Sherman, Texas;
- A new 18,940 hp compressor station at MP 72.7 near Paris, Texas;
- A new 20,604 hp compressor station at MP 183 near Mira, Louisiana;
- A new 25,339 hp compressor station at MP 293 near Sterlington, LA;
- An additional 30,000 hp of compression at Gulf South's proposed Harrisville Compressor Station (docket CP07–32–000)
- Four (4) meter and regulation (M&R) stations to interconnect with Enterprise Texas Pipeline L.P. at MP 0.0 in Grayson County, TX, Enogex intrastate pipeline at MP 34.2 in Bryan County, Oklahoma, Crosstex North Texas Pipeline at MP 72.7 in Lamar County, Texas, and Gulf South at MP 350.7 in Madison Parish, Louisiana;
- 4 pig launching/receiving sites, 3 launching only facilities, 3 receiving only facilities and 17 mainline valves.

Boardwalk proposes to have the project constructed and operational by October 1, 2008.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**.

**Land Requirements for Construction**

As proposed, the typical construction right-of-way for the project pipeline would be 100-feet wide. Following construction, Gulf Crossing has proposed to retain a 60-foot-wide permanent right-of-way for operation of the project. Additional, temporary extra workspaces beyond the typical construction right-of-way limits may also be required at certain feature crossings (e.g., roads, railroads, wetlands, or waterbodies), in areas with steep side slopes, or in association with special construction techniques. In residential areas, wetlands, and other sensitive areas, the construction right-of-way width would be reduced as necessary to protect homeowners and environmental resources.

Based on preliminary information, construction and operation of the proposed project facilities would affect about 5,650 acres of land. Following construction, about 2,709 acres would be maintained as permanent right-of-way, and about 44.5 acres of land would be maintained as new aboveground facility sites. The remaining 2,896.5 acres of temporary workspace (including all temporary construction rights-of-way, extra workspaces, and pipe storage and contractor yards) would be restored and allowed to revert to its former use.

**The EIS Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from the approval of an interstate natural gas pipeline. The FERC will use the EIS to consider the environmental impact that could result if the Gulf Crossing project is authorized under section 7 of the Natural Gas Act.

NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Wetlands and vegetation;
- Fish and wildlife;
- Threatened and endangered species;
- Land use, recreation, and visual resources;
- Air quality and noise;
- Cultural resources;
- Socioeconomics;
- Reliability and safety; and
- Cumulative environmental impacts.

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking Federal, State, and local governmental agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those identified in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided in Appendix 2.

**Currently Identified Environmental Issues**

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the project site and the facility information provided by Boardwalk. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effects on prime farmland and erodable soils.
- Potential impacts to perennial and intermittent waterbodies, including waterbodies with federal and/or state designations/protections.
- Evaluation of temporary and permanent impacts on wetlands and development of appropriate mitigation.
- Potential impacts to fish and wildlife habitat, including potential impacts to federally and state-listed threatened and endangered species.
- Potential visual effects of the aboveground facilities on surrounding areas.
- Potential impacts and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
- Impacts to air quality and noise associated with construction and operation.
- Public safety and hazards associated with the transport of natural gas.
- Alternative alignments for the pipeline route and alternative sites for the compressor stations.
- Potential impacts to Native American lands and cultural resources.
- Land use impacts from pipeline easements.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 3, DG2E.
- Reference Docket No. PF07–1–000 on the original and both copies.

• Mail your comments so that they will be received in Washington, DC on or before May 4, 2007.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. The Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov*.

The public scoping meetings are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be generated so that your comments will be accurately recorded.

Once Broadwater formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

**Environmental Mailing List**

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

**Availability of Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at *1–866–208–FERC* (3372). Additional information can also be found on the Internet at *http://www.ferc.gov*. The ''eLibrary link'' on the FERC Web site provides access to documents submitted to and issued by the Commission, such as comments, orders, notices and rulemakings. Once on the FERC Web site, click on the ''eLibrary link,'' select ''General Search'' and in the ''Docket Number'' field enter the project docket number excluding the last three digits (PF07–1). When researching information be sure to select an appropriate date range. In addition, the FERC now offers a free e-mail service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For assistance with the FERC Web site or with eSubscription, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact 1–202–502–8659.

Finally, Boardwalk has established an Internet Web site for this project at *http://www.gulfcrossing.com*. The website includes a description of the project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to Boardwalk at 1–713–544–5420.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6443 Filed 4–5–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

April 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time.

b. *Project No:* 11480–004.

c. *Date Filed:* March 19, 2007.

d. *Applicant:* Haida Corporation.

e. *Name of Project:* Upper Reynolds Creek Hydroelectric Project.

f. *Location:* On Reynolds Creek, near the town of Hydaburg, Copper River Meridian, Prince of Wales, in the Ketchikan County recording district, Alaska.

g. *Pursuant to:* Pub. L. 109–297, 120 STAT. 1471.

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005; (202) 408–5400.

i. *FERC Contact:* Diane M. Murray, Telephone: (202) 502–8838 and e-mail: diane.murray@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* May 10, 2007.

*All documents (original and eight copies) should be filed with:* Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11480–004) on any comments.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee requests that the Commission grant two, two-year extensions of time from the existing deadlines to commence and complete project

construction of the Jordan Dam Hydroelectric Project. This will be the first and second 2-year extensions of three authorized by Public Law 109–297. The requested new deadlines would be October 24, 2008, and October 24, 2010, to commence and complete construction, respectively.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6441 Filed 4–5–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP07–52–000]**

### Downeast LNG, Inc.; Notice of Technical Conference

April 2, 2007.

On Wednesday, April 25, 2007, at 9 a.m. (EDT), staff of the Office of Energy Projects will convene a cryogenic design and technical conference regarding the proposed Downeast LNG import terminal. The cryogenic conference will be held at the Calais Motor Inn at 663 Main Street, Calais, Maine 04619. For Calais Motor Inn details call 1–800–439–5531.

The conference will review the design of the LNG storage tanks and facility, instrumentation and controls, hazard detection and controls, spill containment, geotechnical topics, and other issues related to the operation of the proposed facility. Issues related to environmental impacts and LNG vessel transit are outside the scope of the conference.

In view of the nature of critical energy infrastructure information and security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested federal, state, and local agencies. Any person planning to attend the April 25th cryogenic conference must register by close of business on Thursday, April 19, 2007. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the referenced online link) to 202–208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. For additional information regarding the cryogenic conference, please contact Tejal Patel at 202–502–6037.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6437 Filed 4–5–07; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6685–7]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

**Summary of Rating Definitions**

*Environmental Impact of the Action*

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are

of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

*Adequacy of the Impact Statement*

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

**Final EISs**

EIS No. 20060488, ERP No. F–BLM–J02049–WY, Atlantic Rim Natural Gas Field Development Project, Proposed Natural Gas Development to 2000 Wells, 1800 to Coal Beds and 200 to Other Formations, Carbon County, WY.

*Summary:* EPA continues to have environmental concerns about adverse impacts to water quality, wildlife habitat and native vegetation, and suggests that the ROD include additional BMPs that avoid or reduce impacts to these resources.

EIS No. 20070023, ERP No. F–AFS–L65521–WA, Buckhorn Access Project, To Utilize the Marias Creek Route to Construct and Reconstruct Roads, Funding, NPDES Permit and U.S. Army COE Section 404 Permit, Okanogan and Wenatchee National Forests, Tonasket Ranger District, Okanogan County, WA.

*Summary:* The Final EIS addressed EPA's comments on the NPDES permit and surface water quality; however, EPA continues to have environmental concerns about impacts to wetlands. EPA requests that the ROD include detailed information on the performance bond and implementation of the monitoring plan based on the most recent modeling and analysis of water resources. Additionally, the ROD should outline how the monitoring activities of 3 agencies will be coordinated.

EIS No. 20070062, ERP No. F–NPS–H65025–NE, Niobrara National Scenic River General Management Plan, Implementation, Brown, Cherry, Keya Paha and Rock Counties, NE.

*Summary:* EPA does not object to the proposed action.

EIS No. 20070066, ERP No. F–BLM–K65294–AZ, Arizona Strip Field Office Resource Management Plan, which includes: Vermilion Cliffs National Monument, Grand-Canyon-Parashant National Monument (Parashant) BLM Portion, General Management Plan for the Grand Canyon-Parashant National Monument NPS Portion of Parashant, Implementation, AZ.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: April 3, 2007.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E7–6456 Filed 4–5–07; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6685–6]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 03/26/2007 Through 03/30/2007

Pursuant to 40 CFR 1506.9.

*EIS No. 20070126, Final Supplement, AFS, CA,* Watdog Project, Preferred Alternative is B, Feather River Ranger District, Plumas National Forest, Butte and Plumas Counties, CA, *Wait Period Ends:* 05/07/2007, *Contact:* John Zarlengo 530–534–6500.

*EIS No. 20070127, Final EIS, NPS, 00,* Ellis Island and Statue of Liberty National Monument Development Concept Plan, Long-Term Rehabilitation and Reuse for Historic Buildings, Implementation, New York Harbor, NY and NJ, *Wait Period Ends:* 05/07/2007, *Contact:* Cynthia Garrett 212–363–3206 Ext 100.

*EIS No. 20070128, Final EIS, AFS, ID,* Myrtle Creek Healthy Forest Restoration Act Project, Proposes Aquatic and Vegetation Improvement Treatments, Panhandle National Forests, Bonners Ferry Ranger District, City of Bonners Ferry, Boundary County, ID, *Wait Period Ends:* 05/07/2007, *Contact:* Doug Nishek 208–267–5561.

*EIS No. 20070129, Draft Supplement, NOA, 00,* Atlantic Mackerel, Squid and Butterfish, Fishery Management Plan, Amendment #9, Implementation, Essential Fish Habitat (EFH), Exclusive Economic Zone (EEZ), *Comment Period Ends:* 05/21/2007, *Contact:* Patricia A. Kurkul 978–281–9250.

*EIS No. 20070130, Draft EIS, NOA, 00,* Phase I—Essential Fish Habitat Omnibus Amendment #2, Designations for 27 Species, Amendment #14 to the Northeast Multispecies FMP, Amendment #14 to the Atlantic Scallop FMP, Amendment #3 to the Atlantic Herring FMP, Amendment 4 to the Monkfish FMP, Amendment 1 to the Deep-Sea Red Crab FMP, Amendment 2 to the Skates FMP and Amendment 3 to the Atlantic Salmon FMP, Maine to North Carolina, *Comment Period Ends:* 05/21/2007, *Contact:* Peter Colosi 978–281–9332.

*EIS No. 20070131, Draft EIS, IBR, NM,* Navajo-Gallup Water Supply Project, To Provide a Long-Term (Year 2040) Water Supply, Treatment and Transmission of Municipal and Industrial (M&I) Water to Navajo National and Jicarilla Apache Nation, City of Gallup, New Mexico, *Comment Period Ends:* 06/28/2007, *Contact:* Rege Leach 970–385–6553.

*EIS No. 20070132, Draft EIS, AFS, 00,* Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway, Winter Use Plan, To Provide a

Framework for Managing Winter Use Activities, Implementation, Fremont County, ID, Gallatin and Park Counties, MT Park and Teton Counties, WY, *Comment Period Ends:* 05/31/2007, *Contact:* Debbie VanDePolder 307–344–2019.

*EIS No. 20070133, Draft EIS, FRC, GA,* Elba III Project, Construct, Operate and Acquire Facilities to move Re-Vaporized Liquefied Natural Gas (LNG), U.S. Army COE Section 10 and 404 Permits and U.S. Coast Guard Permit, Elba Island, Chatham County, GA, *Comment Period Ends:* 05/21/2007, *Contact:* Andy Black 1–866–208–3372.

*EIS No. 20070134, Final EIS, FHW, VA,* I–81 Corridor Improvement Study in Virginia, Transportation Improvements from the Tennessee Border to the West Virginia Border, (Tier 1), Several Counties, VA and WV, *Wait Period Ends:* 05/07/2007, *Contact:* John Simkins 804–775–3342.

Dated: April 3, 2007.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E7–6452 Filed 4–5–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8295–8]**

## National Advisory Council for Environmental Policy and Technology

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act, P.L. 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, State, and tribal governments. The purpose of this meeting is to discuss the NACEPT agenda, including sustainable water infrastructure, environmental stewardship, cooperative conservation, energy and the environment, environmental technology, and environmental indicators. The Council will also review and approve the NACEPT Environmental Technology Subcommittee's Second Report. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

**DATES:** NACEPT will hold a two day open meeting on Thursday, April 26, 2007, from 8:30 a.m. to 6 p.m. and Friday, April 27, 2007, from 8 a.m. to 2 p.m.

**ADDRESSES:** The meeting will be held at the Four Points by Sheraton Hotel, 1201 K Street, NW., Washington, DC 20005. The meeting is open to the public, with limited seating on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, (202) 233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

*Meeting Access:* For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–233–0061 or *altieri.sonia@epa.gov*. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 29, 2007.

**Sonia Altieri,**

*Designated Federal Officer.*

[FR Doc. E7–6458 Filed 4–5–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8295–7]**

## Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board Hypoxia Advisory Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA's Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB Hypoxia Advisory Panel to discuss and develop its preliminary draft advisory report concerning the hypoxic zone in the Gulf of Mexico.

**DATES:** The meeting will be held on June 13, 2007 from 9 a.m.–5 p.m., June 14, 2007 from 9 a.m.—5 p.m., and on June 15, 2007 from 9 a.m.—12 p.m.

**ADDRESSES:** The meeting will be held in New Orleans, Louisiana at the Astor Crowne Plaza located at 739 Canal Street (Canal and Bourbon Street).

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding the public meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office by telephone/voice mail at (202) 343–9867, or via e-mail at *stallworth.holly@epa.gov*. The SAB mailing address is: U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found in the SAB Web site at: *http://www.epa.gov/sab*.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Hypoxia Advisory Panel will hold a public meeting to develop a report that details advances in the state of the science regarding hypoxia in the Northern Gulf of Mexico. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Background:* EPA participates with other Federal agencies, states and tribes in the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. In 2001, the Task Force released the Action Plan for Reducing, Mitigating and Controlling Hypoxia in the Northern Gulf of Mexico (or Action Plan available at *http://www.epa.gov/msbasin/taskforce/actionplan.htm*). The Action Plan was informed by the science described in 2000 in An Integrated Assessment of Hypoxia in the Northern Gulf of Mexico (or Integrated Assessment available at *http://www.noaa.gov/products/hypox_finalfront.pdf*) developed by the National Science and Technology Council, Committee on Environment and Natural Resources. Six technical reports provided the scientific foundation for the Integrated Assessment and are available at *http://*

*www.nos.noaa.gov/products/pub_hypox.html*. Given the passage of 6 years, EPA's Office of Water has requested that the SAB develop a report that evaluates the updated science regarding the causes and extent of hypoxia in the Gulf of Mexico, as well as the scientific basis of possible management options in the Mississippi River Basin.

In response to EPA's request, the SAB Staff Office formed the SAB Hypoxia Advisory Panel. Background on the Panel formation process was provided in a **Federal Register** notice published on February 17, 2006 (71 FR 8578–8580). The SAB Hypoxia Advisory Panel met on September 6–7, 2006 (71 FR 45543–45544), again on December 6–8, 2006 (71 FR 66329–66330) and again on February 28–March 2, 2007 ( 72 FR 5968–5969). Teleconferences of the full Hypoxia Advisory Panel and its three subgroups have also been published in **Federal Register** Notices (71 FR 55786–55787, 71 FR 59107, 71 FR 77743–77744 and 72 FR 11359–11360). Information about the SAB Hypoxia Advisory Panel is available on the SAB Web site at: *http://www.epa.gov/sab*.

*Availability of Meeting Materials:* Materials in support of this meeting will be placed on the SAB Web site *http://www.epa.gov/sab/* in advance of the meeting.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Stallworth, DFO, at the contact information noted above, no later than June 4, 2007, to be placed on the public speaker list for the June 13–15, 2007 meeting. *Written Statements:* Written statements should be received in the SAB Staff Office no later than June 4, 2007 so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail to *stallworth.holly@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

*Meeting Access:* For information on access or services for individuals with disabilities, please contact Dr. Stallworth at (202) 343–9867 or *stallworth.holly@epa.gov*. To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: April 2, 2007.

**Anthony F. Maciorowski,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. E7–6459 Filed 4–5–07; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

**TIME AND DATE:** The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, April 11, 2007. The closed portion of the meeting will follow immediately the open portion of the meeting.

**PLACE:** Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

**STATUS:** The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED AT THE OPEN PORTION:** Appointment to the Office of Finance Board of Directors.

Waivers Concerning Preparation of Combined Financial Reports.

**MATTER TO BE CONSIDERED AT THE CLOSED PORTION:** Periodic Update of Examination Program Development and Supervisory Findings.

**CONTACT PERSON FOR MORE INFORMATION:** Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: April 3, 2007.

By the Federal Housing Finance Board.

**Neil R. Crowley,**

*Acting General Counsel.*

[FR Doc. 07–1739 Filed 4–4–07; 12:53 pm]

BILLING CODE 6725–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–0990–0000]**

### Thirty-Day Notice

**AGENCY:** Office of the Secretary.

**Agency Information Collection Activities: Proposed Collection; Comment Request**

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:*

Existing Collection without an OMB number.

*Title of Information Collection:* National Blood Collection and Utilization Survey.

*Form/OMB No.:* OS–0990–New.

*Use:* The Advisory Committee on Blood Safety and Availability, Health and Human Services (HHS), was established to provide policy advice to the Secretary and the Assistant Secretary for Health. The advice of the committee is partly dependent on the analysis of relevant blood collection and utilization data which is also widely distributed and used by the transfusion medicine community. To that end, the Office of Public Health and Science (OPHS) is responsible for conducting a bi-annual cross-sectional national blood products survey. OPHS performed the 2005 National Blood Collection and Utilization Survey (NBCUS) using a nationally representative sample of hospitals and blood collection centers. Previously private and government financed versions of the NBCUS have successfully surveyed greater than 90% of the U.S. blood collection and processing facilities and more than 2900 hospital based transfusion blood banks in the United States. The objective of the 2007 NBCUS is to produce reliable and accurate estimates of national and regional collections, utilization, and safety of all blood products—red blood cells, fresh frozen plasma, and platelets. New to the 2007 NBCUS is the identification and collection of baseline data for biovigilance blood safety

monitoring. An important purpose of the survey is to help the federal government implement a blood safety public health monitoring system. The survey will be mailed to approximately 3000 institutions that include hospitals, blood collection facilities, and cord blood banks selected from the American Hospital Association annual survey database and AABB member list of blood collection facilities, respectively. The maximum length of the instrument will be approximately 20–21 pages and the estimated number of data elements will be 200 to 300. The survey will include general questions about the institution, questions about blood collection, processing, and testing, blood transfusion, special procedures and product disposition, cellular therapy products, and human tissue. The 2007 NBCUS will also include additional questions on issues of biovigilance patient safety monitoring. Facilities will be surveyed regarding their 2006 calendar year activities. A toll-free hotline service for survey inquiries will be made available. Follow-up procedures will be in place to address survey non-responders. Following data collection, statistical tabulations of results for each question will be performed. The survey data will be analyzed by institution type, services provided, USPHS region, etc. A final comprehensive report on blood collection and transfusion-related activities in the United States will be issued for publication by HHS.

*Frequency:* One time.

*Affected Public:* Business or other for-profit.

*Annual Number of Respondents:* 3000.

*Total Annual Responses:* 3000.

*Average Burden Per Response:* 3 hours.

*Total Annual Hours:* 9000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 29, 2007.

**Alice Bettencourt,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. E7–6415 Filed 4–5–07; 8:45 am]

**BILLING CODE 4150–41–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–0990–0220]**

### Thirty-Day Notice

**AGENCY:** Office of the Secretary.

**Agency Information Collection Activities: Proposed Collection; Comment Request**

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension.

*Title of Information Collection:* Voluntary Academic and Industry Partner Surveys to Implement Executive Order 12862 and 5 U.S.C 305 for the Dept. of Health and Human Services.

*Form/OMB No.:* OS–0990–0220.

*Use:* The Office of Acquisition Management Policy (OAMP) under the Assistant Secretary for Administration and Management (ASAM) and the Office of Grants (OG) under the Assistant Secretary for Resources and Technology (ASRT), Office of the Secretary, Department of Health and Human Services (HHS) request that the Office of Management and Budget (OMB) extend its existing approval under Clearance No. 0990–0220 for HHS to undertake voluntary surveys of HHS partners in academia and industry (*e.g.*, Principal Investigators, business offices, and vendors) through January 31, 2010. To comply with Executive Order 12862, Setting Customer Service Standards (the EO), HHS again plans to systematically survey its grant recipients and contractors to compile their evaluations of the Department's grants and procurement processes, and to improve the way we conduct business with them.

These voluntary surveys will continue to be a collaborative effort, with OAMP and OG providing leadership, oversight, and a methodology; and the HHS Operating Divisions (OPDIVs) conducting the surveys for their own operations. Each OPDIV will conduct web-based surveys of its partners to obtain feedback for improving business processes. The grant recipients and contractors to be surveyed are sufficiently familiar with the Department and its OPDIVs to make this feedback extremely useful. These surveys will give OAMP, OG, and each of the OPDIVs an opportunity to understand and evaluate grant and procurement quality standards, as well as to incorporate best industry or public sector standards into OPDIV practices.

*Frequency:* Reporting every 3 years.

*Affected Public:* Business or other for-profit, not-for-profit institutions, Federal Government.

*Annual Number of Respondents:* 2133.

*Total Annual Responses:* 2133.

*Average Burden Per Response:* 10.75 minutes.

*Total Annual Hours:* 382.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 29, 2007.

**Alice Bettencourt,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. E7–6416 Filed 4–5–07; 8:45 am]

**BILLING CODE 4151–17–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Awareness of Embryo Donation and/or Adoption Public Awareness Campaign

**AGENCY:** Office of Population Affairs, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

*Announcement Type:* This is the initial announcement of a competitive funding opportunity for cooperative agreement projects.

*Funding Opportunity Number:* OPA–2007–EA.

*CFDA Number:* 93.007.

**DATES:** To receive consideration, applications must be received no later than 5 p.m. Eastern Time on June 5, 2007. The application due date requirement in this announcement supercedes the instructions in the OPHS–1 form. A Letter of Intent (LOI) is requested on or by May 7, 2007.

**ADDRESSES:** To receive consideration, applications must be received in the Office of Grants Management, Office of Public Health and Science (OPHS), Department of Health and Human Services (HHS) c/o WilDon Solutions, Office of Grants Management Operations Center, 1515 Wilson Blvd., Third Floor, Suite 310, Arlington, VA 22209: Attention: Office of Population Affairs. LOIs should be sent to the same address.

*Executive Summary:* The Office of Population Affairs (OPA), within the Office of Public Health and Science (OPHS) announces the availability of Fiscal Year (FY) 2007 funds to support a total of four to five new cooperative agreement projects, with the goal of increasing public awareness of embryo donation and/or adoption. OPA anticipates approximately $1,000,000 in funding will be available for four to five new cooperative agreements each in the range of $250,000 to $350,000 per year. Projects will be funded in annual increments (budget periods) and for a project period of two years. Funding for all budget periods beyond the first year of the cooperative agreement is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. Applicants must demonstrate experience with embryo donation and/or adoption programs that conform with professionally recognized standards governing embryo donation and/or adoption and other applicable Federal or State requirements. For the purposes of this announcement, embryo donation and/or adoption is defined as the donation of frozen embryo(s) from one party to a recipient who wishes to bear and raise a child or children.

### I. Funding Opportunity Description

The OPA announces the availability of funds for FY 2007 and requests applications for cooperative agreement projects that will contribute to increasing public awareness of embryo donation and/or adoption.

The OPA is under the direction of the Deputy Assistant Secretary for Population Affairs (DASPA), who serves as the senior advisor to the Assistant Secretary for Health (ASH) on reproductive health science issues. The OPA established by PL 91–572 serves as the focal point on matters pertaining to population research and family planning, and is responsible for developing and making readily available information (including educational materials) on family planning and population growth to all persons desiring such information.

The increasing success of assisted reproductive technologies (ART) has resulted in a situation in which an infertile couple typically creates several embryos through in-vitro fertilization (IVF). During IVF treatments, couples may produce many embryos in an attempt to conceive with several being cryopreserved (frozen) for future use. If a couple conceives without using all of the stored embryos, they may choose to release the remaining unused embryos for donation and adoption allowing other infertile couples the experience of pregnancy and birth. Embryo donation and/or adoption is a relatively new process in which individuals who have extra frozen embryos agree to release the embryos for transfer to the uterus of another woman, either known or anonymous to the donor(s) for the purpose of the recipient(s) attempting to bear a child and be that child's parent.

*Legislative History*

On February 15, 2007, the President signed into law H.J. Res. 20, which provides fiscal year (FY) 2007 appropriations through September 30, 2007, for continuing projects and activities of the Federal Government. Public Law 110–5, the ''Revised Continuing Appropriations Resolution, 2007'', which includes appropriations for DHHS. The bill does not include a statement addressing embryo adoption and/or donation public awareness campaign activities; however, the Revised Continuing Appropriations Bill for 2007 provides '' * * * such amounts as may be necessary, at the level specified in subsection (c) and under the authority and conditions provided in the applicable appropriations Act for fiscal year 2006, for projects or activities (includes the costs of direct loans and loan guarantees) that are not otherwise provided for and for which appropriations, funds, or other authority were made available in the following appropriations Acts: * * * (5) The Departments of Labor, Health and Human Services, and Education, and Related Appropriations Act, 2006.'' Public Law 109–149, The Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2006, authorized the Secretary to a conduct public awareness campaign to educate Americans about the existence of frozen embryos available for donation and/or adoption. The Conference Report (H.R. Conf. Rep. 109–337) accompanying the FY 2006 Appropriations for the Departments of Labor, Health and Human Services, and Education and Related Agencies did not include a statement addressing embryo donation and/or adoption awareness activities; however, the budget table accompanying the conference report allocated $2 million.

*Review of Grant Materials*

Grantees shall submit all materials proposed for use in the funded project (including, but not limited to, Web sites, videos, training materials, brochures, fact sheets, press releases, agendas, curricula, reports, journal articles, promotional pieces, advertisements, Public Service Announcements (PSA's), articles, mailings) to the OPA Project Officer for review and approval prior to use in the funded program. The review shall ensure that materials are consistent with the requirements of this announcement and other applicable grant requirements.

*Grant Attribution*

The OPA is interested in making available to the public the results and accomplishments of activities that it funds. Therefore, grantees will be required to place an acknowledgment of OPA grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity.

### II. Award Information

*Funding Instrument Type:* Cooperative Agreement.

*Anticipated Total Funding:* $1,000,000.

*Anticipated Number of Awards:* A total of 4–5. OPA anticipates funding four to five new projects.

*Expected Amounts of Individual Awards:* $250,000–$350,000.

*Floor of Award Range:* None.

*Ceiling of Award Range:* $350,000 for the first 12 month budget period. OPA will not accept and review applications with budgets greater than the ceiling of the award range.

*Project Periods for Awards:* 24 months. The projects will be awarded for a project period of 24 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Applications are encouraged from organizations which are currently operating programs that have the capability of expanding and enhancing public awareness of embryo donation and/or adoption, and that have the capability to conduct a rigorous evaluation of the funded project.

A cooperative agreement is a grant award instrument establishing an ''assistance'' relationship between OPA and a recipient, in which substantial programmatic involvement with the recipient is anticipated during the performance of the activity. The recipient will have lead responsibilities in all aspects of the project, including any modifications to the project, conduct of the project, and preparation of any publications. The OPA project officer will collaborate with the recipients, as appropriate, and provide consultation, assistance, and support in planning, implementing, and evaluating all aspects of the proposed project plan. OPA will have substantial programmatic involvement during conduct of the project, through technical assistance, advice and coordination. Substantial involvement as a partner would include, for example, assisting in planning an agenda, selecting speakers, organizing a symposium, determining the content of training curricula and related educational materials, determining the topics or data to be reviewed as part of an assessment, and determining the acceptability of articles or reports. OPA will provide assistance in the preparation and review of any reports that may be disseminated as part of a funded project.

## III. Eligibility Information

### *1. Eligible Applicants*

Eligible applicants must demonstrate previous experience with embryo donation and/or adoption and be knowledgeable in all elements of the process of embryo donation and/or adoption. Only agencies and organizations, not individuals, are eligible to apply. Eligible applicants include public agencies, non-profit organizations, and for-profit organizations. One agency must be identified as the applicant organization and will have legal responsibility for the project. Additional agencies and organizations can be included as co-participants, subgrantees, subcontractors, or collaborators if they will assist in providing expertise and in helping to meet the needs of the recipients.

Any public or private nonprofit organization or agency is eligible to apply for a cooperative agreement grant. However, only those organizations or agencies which demonstrate the capability of providing the proposed services and meet the requirements of this announcement are considered for awards. Faith-based and community-based organizations that meet the eligibility requirements are encouraged to apply for these embryo donation and/or adoption public awareness cooperative agreement projects. Please note, however, that cooperative agreement funds may not be used for inherently religious activities, such as worship, religious instruction, and proselytization. If an organization engages in such activities, they must be offered separately in time or location from the cooperative agreement program and participation must be voluntary for program beneficiaries. A cooperative agreement program, in providing services and outreach related to program services, cannot discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

Applicants should note that section 74.81 of the DHHS grants administration regulations (45 CFR part 74) indicates that except for awards under certain small business programs, no grant funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

### *2. Cost Sharing or Matching*

None.

## IV. Application and Submission Information

### *1. Address To Request Application Kit*

Application kits may be obtained by accessing Grants.gov at *http://www.grants.gov* or the GrantSolutions system at GrantSolution.gov. To obtain a hard copy of the application kit, contact WilDon Solutions at 1–888–203–6161. Applicants may fax a written request to WilDon Solutions at (240) 453–8823 or e-mail the request to *OPHSgrantinfo@teamwildon.com.* Applications must be prepared using Form OPHS–1, which can be obtained at the Web sites noted above.

### *2. Content and Form of Application Submission*

The OPA requests that you send a Letter of Intent (LOI) if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, estimate the potential review workload, and allow OPA to plan the review process. The information will be used to determine the number of expert reviewers needed to evaluate the applications. The narrative should be not more than two double-spaced pages, printed on one side, with one-inch margins, and in 12-point font, unreduced. The LOI should include the following information: ''Attention: Embryo Adoption Public Awareness Campaign Letter of Intent,'' name and address of the applicant institution; name, address and telephone number of the contact person; and specific objectives to be addressed by the proposed project.

Applications must be prepared on the forms supplied (OPHS–1) and in the manner prescribed in the application kits provided by the OPA. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, applicants must submit one signed original of the application and two photocopies in one package, including all forms and attachments. Please label the application envelope: ''Attention: Embryo Adoption Public Awareness Campaign.'' The application should be typed and should be no more than 50 double-spaced pages (excluding attachments), printed on one side, with one-inch margins, and in 12-point font, unreduced. All pages, including appendices should be numbered

sequentially and stapled, or otherwise secured, in the upper left corner.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the applications summary in grants management documents.

Program Requirements/Application Content

Applicants will be required to develop and implement programs for a public awareness campaign on embryo adoption. Applicants are required to submit a plan and time line that demonstrate that the proposed public awareness campaign: (a) Will be competency-based, (b) has experience with embryo adoption programs that conform to professionally-recognized guidelines and other relevant Federal or State requirements, (c) will be pilot tested and appropriately modified, as necessary, before use, and (d) can be reliably evaluated. In the narrative section of the application, applicants are advised to describe the strategies and processes that they will use to design a public awareness campaign. The applicant should document its capacity to undertake a public awareness campaign focused on potential donors and/or recipients. Applicants are encouraged to present a description of approaches that may be used, as well as any supplemental materials (brochures, handouts, visual aids, and other resources). Moreover, applicants are advised to demonstrate a familiarity with and understanding of professionally recognized standards or practices (both medical and legal issues) pertaining to embryo adoption, as well as supportive services for potential donor or recipient couples. The applicant organization should clearly demonstrate its professional knowledge and experience in embryo adoption whether with potential donor or recipient populations.

Applicants must make reasonable efforts to ensure that the individuals who design and implement the public awareness campaign are knowledgeable in all elements of the embryo adoption process and are experienced in providing such information. Applicant organizations should demonstrate that they have access to frozen embryos for adoption either directly or through partnership arrangements. Applicants should include information about the number of frozen embryos to which they have access, their history in working with either potential donor or recipient couples, and the organization's capacity to facilitate an embryo adoption public awareness campaign. In the project narrative, applicants are encouraged to present a plan that may be used for working with potential donors and/or recipients under the proposed public awareness campaign.

Application Narrative

In the narrative section of the application, applicants are advised to describe the strategies and processes that they will use. The applicant should document its capacity to undertake a project that is focused on increasing public awareness of embryo donation and/or adoption. Applicants are encouraged to present a description of approaches that may be used, as well as any supplemental materials. Moreover, applicants are advised to demonstrate a familiarity with and understanding of professionally recognized standards or practices (both medical and legal issues) pertaining to embryo donation and/or adoption, as well as supportive services for potential donor or recipient couples. The applicant organization should clearly demonstrate its professional knowledge and experience in embryo donation and/or adoption.

Applicants should include information about their history in working with embryo donation and/or adoption, and the organization's capacity to further the goal of increasing public awareness of embryo donation and/or adoption. As part of the project narrative, applicants are advised to describe the methods they will use to recruit, select, train and evaluate individuals who will implement the project.

Applicants, in the project narrative, are encouraged to present a plan for evaluation of the project. The evaluation plan should be two tiered to address: (1) Process, including the planning, content, and quality of the products (e.g., videos, pamphlets, journal articles, presentations, survey instruments, focus groups projects, pilot test reports, conference proceedings, etc.) produced and (2) participant satisfaction and/or project effectiveness, as appropriate. Applicants that do not have the in-house capacity to conduct an evaluation are advised to propose contracting with a third party evaluator to conduct the evaluation.

Applicants should prepare a project description statement in accordance with the following general instructions and use the information provided in this section and the evaluation criteria section to develop the application content. Applications will be evaluated on the criteria listed, so it is important to follow them in describing your program plan. The narrative should contain the following sections in the order presented below:

1. *Project Summary/Abstract:* Provide a summary of the project description not to exceed one page. Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project since the abstract will be used to provide reviewers with an overview of the application, will form the basis for an application summary in official documents, and it may be posted on the OPA web site. It should describe the objectives of the project, the approach to be used, and the results or benefits expected.

2. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, legal, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Describe the rationale for use of the proposed approach based upon previous practice and review of the literature and/or evaluation findings. Any relevant data based on studies should be included or referred to in the endnotes/footnotes. In developing the project description, the applicant may volunteer to provide information on the total range of related projects being conducted or supported (or to be initiated), some of which may be outside the scope of the program announcement.

Describe the specific geographic region that will be served by the organization. This section should include a justification for the selection of the region, based on, for example, geographic size or the number and types of ART centers in the area. There are no geographic restrictions on where the prospective projects may be conducted. The OPA will accept applications for projects of national, regional, or local scope. The rationale for the project scope must be justified in detail.

3. *Approach:* Provide a detailed work plan and timetable for both the first and second year of the proposed project. Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time,

or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of program activities to be held, or appropriate measurable outcomes. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

4. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

5. *Organizational Profiles:* Provide information on the applicant organization and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information.

6. *Budget and Budget Justification:* Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, and wage rates. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant. Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, and taxes, unless treated as part of an approved indirect cost rate. Include information on the costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition. Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested. Include information on the costs of all contracts for services and goods except for those, which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information.

*3. Submission Dates and Times*

To be considered for review, applications must be received by the Office of Public Health and Science, Office of Grants Management, c/o WilDon Solutions, by 5 p.m. Eastern Time on June 5, 2007. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date requirement in this announcement supercedes the instructions in the OPHS–1 form.

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the GrantSolutions system or the Grants.gov Website Portal is encouraged. Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review.

In order to apply for new funding opportunities which are open to the public for competition, you may access the Grants.gov website portal. All OPHS funding opportunities and application kits are made available on Grants.gov. If your organization has/had a grantee business relationship with a grant program serviced by the OPHS Office of Grants Management, and you are applying as part of ongoing grantee related activities, please access GrantSolutions.gov.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible. Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Website Portal

The Grants.gov Website Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the Grants.gov Website Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Upon completion of a successful electronic application submission via the Grants.gov Website Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Website Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Website Portal will not be transferred to the GrantSolutions system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Website Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Website Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the GrantSolutions system for processing. Upon receipt of both the electronic application from the Grants.gov Website Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Website Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Website Portal.

Electronic Submissions via the GrantSolutions System

The electronic grants management system, GrantSolutions.gov, provides for applications to be submitted electronically. When submitting applications via the GrantSolutions system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the GrantSolutions system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however, these mail-in items must be entered on the GrantSolutions Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Upon completion of a successful electronic application submission, the GrantSolutions system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the GrantSolutions system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

*4. Intergovernmental Review*

This program is not subject to the intergovernmental review requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100.

*5. Funding Restrictions*

The allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

Applicants for cooperative agreements are expected to anticipate and justify their funding needs and the activities to be carried out with those funds in preparing the budget and accompanying narrative portions of their applications. If applicants are uncertain whether a particular cost is allowable, they should contact the OPHS Office of Grants Management at 240–453–8822 for further information.

**V. Application Review Information**

*1. Criteria*

Each application for a cooperative agreement grant project will be evaluated individually according to the following criteria by a panel of independent reviewers appointed by the OPHS. Before the review panel convenes, each application will be screened for applicant organization eligibility, as well as to make sure the application contains all of the essential elements.

Applicants that meet the requirements of this program announcement will be notified by the Office of Grants Management. A panel of at least three reviewers will use the evaluation criteria listed below to determine the strengths and weaknesses of each application, provide comments and assign numerical scores. Applicants should address each criterion in the project application. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (30 Points)

Applicants must demonstrate a clear understanding of the legislative goals and demonstrate how their approach to the project design will contribute to achieve the legislative goals. Applicants must also demonstrate an understanding of the information and skills needed by the designated staff, as well as of the intended audience. Applicants should provide letters of commitment or Memoranda of Understanding from organizations, agencies, and consultants that will be partners or collaborators in the proposed project. These documents should describe the role of the agency, organization, or consultant and detail specific tasks to be performed. Specific review criteria include:

(1) Extent to which the application reflects an understanding of the legislative goals of the public awareness campaign for embryo donation and/or adoption, and implementation will contribute to achieving the legislative goals;

(2) Extent to which the application clearly describes and documents an understanding of the need for assistance to support and/or enhance existing efforts regarding public awareness of embryo donation and/or adoption;

(3) Extent to which the application reflects a knowledge and understanding of the challenges involved with embryo donation and/or adoption, and in increasing public awareness about embryo donation and/or adoption;

(4) Extent to which the application reflects a knowledge and understanding of the medical and legal framework of embryo donation and/or adoption, and the services and resources in the geographic area in which the proposed project will be conducted;

(5) Extent to which the application explains how the proposed project will contribute to increased knowledge of the problems, issues, and effective strategies and best practices in the field of embryo donation and/or adoption; and,

(6) Extent to which the application presents a vision of how the project will advance embryo donation and/or adoption public awareness, and discusses broad contextual factors that will facilitate or impede increasing public awareness of embryo donation and/or adoption.

Criterion 2: Approach (30 Points)

In this section, applicants are expected to define goals and specific, measurable objectives for the project. Goals are an end product of an effective project. Objectives are measurable steps for reaching goals. Applicants are advised to describe a preliminary, yet appropriate and feasible plan of action pertaining to the scope of the proposed project and provide details on how the proposed project will be accomplished. If the project involves partnerships with other agencies and organizations, then the roles of each partner should be clearly specified. Applicants are required to describe how the project will be evaluated to determine the extent to which it has achieved its stated goals and objectives. Applicants are expected to present a project design that includes detailed procedures for documenting project activities that is sufficient to implement the goals and provide for an evaluation. The evaluation design is expected to include process and outcome analyses, if feasible. Applicants are expected to report on their evaluation results in their final report to the OPHS upon completion of the project period. Applicants are required to describe the activities that they will develop pursuant to the project. Applicants should discuss the intended audiences for these activities (e.g., ART centers, adoption organizations, practitioners, professional organizations that work with infertile couples, potential recipients, or donors) and present a dissemination plan specifying the venues for conveying the information. This criterion consists of four broad topics: (A) project design, (B) implementation, (C) evaluation, and (D) dissemination. Specific review criteria include:

(A) *Design of the Project.* (1) Extent to which the application reflects a familiarity with and understanding of professionally recognized standards and/or other relevant Federal or State requirements pertaining to embryo donation and/or adoption.

(2) Extent to which the proposed project goals, objectives, and outcomes are clearly specified and measurable, and reflect an understanding of the context in which embryo donation and/or adoption operates; and,

(3) Extent to which the application presents an approach that is: (a) Competency based, (b) consistent with the nationally recognized guidelines, and (c) can be evaluated.

(B) *Implementation.* (1) Extent to which the application clearly describes and provides a justification for the selection of the geographic region that will be served by the project;

(2) Extent to which the application presents an appropriate, feasible, and realistic plan for conducting the project;

(3) Extent to which the application presents an appropriate, feasible and realistic plan for recruiting, selecting, and training individuals to conduct the project;

(4) Extent to which the application provides an appropriate, feasible and

realistic plan for documenting project activities and results, that can be used to describe and evaluate the project, and participant satisfaction; and,

(5) Extent to which the proposed project will establish and coordinate linkages with other appropriate agencies and organizations.

(C) *Evaluation.* (1) Extent to which the methods of evaluation are feasible, comprehensive, and appropriate to the goals, objective, and context of the project;

(2) Extent to which the applicant provides an appropriate, feasible, and realistic plan for evaluating the project, including performance feedback and assessment of program progress that can be used as a basis for program adjustments;

(3) Extent to which the methods of evaluation include process and outcome analyses, as appropriate, for assessing the effectiveness of program strategies and the implementation process; and,

(4) Extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the program and will produce quantitative and qualitative results.

(D) *Dissemination.* (1) Extent to which the application provides an appropriate, feasible and realistic plan for dissemination of information and related educational materials;

(2) Extent to which the intended audience is clearly identified and defined and is appropriate to the goals of the proposed program;

(3) Extent to which the program's products will be useful to the respective audiences;

(4) Extent to which the applicant presents a realistic schedule for developing these products, and provides a dissemination plan that is appropriate in scope and budget to each of the audiences; and,

(5) Extent to which the products to be developed during the program are described clearly and will address the goal of dissemination of information and are designed to support evidence-based improvements of practices in the field.

Criterion 3: Organizational Profile (20 Points)

Applicants need to demonstrate that they have the capacity to implement the proposed program. Capacity includes: (1) Previous experience with similar projects; (2) experience with the target audience; (3) qualifications and experience of the project leadership; (4) experience and commitment of any consultants and subcontractors; and, (5) appropriateness of the organizational structure. This criterion consists of three broad topics: (A) management plan, (B) staff qualifications, and (C) organizational capacity and resources.

Applicants are expected to present a sound and feasible management plan for implementing the proposed program. This section should detail how the program will be structured and managed, how the timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled. The role and responsibilities of the lead agency should be clearly defined and, if appropriate, applicants should discuss the management and coordination of activities carried out by any partners, subcontractors, and consultants. Applicants should include a list of organizations and consultants who will work with the project, along with a short description of the nature of their contribution or effort. Applicants are also expected to produce a time line that presents a reasonable schedule of target dates, and accomplishments. The time line should include the sequence and timing of the major tasks and subtasks, important milestones, reports, and completion dates. The application should also discuss factors that may affect project implementation or the outcomes and present realistic strategies for the resolution of these difficulties.

Applicants must provide evidence that project staff have the requisite experience, and expertise to carry out the proposed project on time, within budget, and with a high degree of quality. Include information on staff knowledge of the medical and legal issues concerning embryo donation and/or adoption, and experience working in this area. Brief resumes of current and proposed staff, as well as job descriptions, should be included. Resumes must indicate the position that the individual will fill, and each position description must specifically describe the job as it relates to the proposed project.

Applicants must show that they have the organizational capacity and resources to successfully carry out the project on time and to a high standard of quality, including the capacity to resolve a variety of technical and management problems that may occur. If the proposed project involves partnering and/or subcontracting with other agencies/organizations, then the application should include an organizational capability statement for each participating organization documenting the ability of the partners and/or subcontractors to fulfill their assigned roles and functions. Specific review criteria include:

(A) *Management Plan.* (1) Extent to which the management plan presents a realistic approach to achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks;

(2) Extent to which the role and responsibilities of the lead agency are clearly defined and the time commitments of the project director and other key project personnel (including consultants) are appropriate and adequate to meet the objectives of the proposed project; and,

(3) Extent to which the applicant discusses factors that may affect the development and implementation of the project and presents realistic strategies for the resolution of these difficulties.

(B) *Staff Qualifications.* (1) Extent to which the proposed project director, key project staff, and consultants have the necessary technical skill, knowledge, and experience to successfully carry out their responsibilities; and,

(2) Extent to which staffing is adequate for the proposed project, including administration, program services, data processing and analysis, evaluation, reporting and implementation of the project.

(C) *Organizational Capacity and Resources.* (1) Extent to which the applicant and partnering organizations collectively have experience in embryo donation and/or adoption consistent with professionally recognized guidelines;

(2) Extent to which the applicant has experience in developing and implementing similar projects; and,

(3) Extent to which the applicant has adequate organizational resources for the proposed project, including administration, program operations, data processing and analysis, and evaluation.

Criterion 4: Budget and Budget Justification (20 Points)

Applicants are expected to present a detailed budget for both the first and second year budget periods. The budget should present reasonable project costs, appropriately allocated across component areas and sufficient to accomplish the objectives. Consideration shall be given to project delays due to start-up when preparing the budget. Applicants are expected to allocate sufficient funds in the budget to provide for two meetings each year with the Project Officer in Rockville, Maryland, and regular conference calls for programmatic collaboration during the performance of the project. Specific review criteria include:

(1) Extent to which applicant demonstrates that the project costs and budget information submitted for the proposed program are reasonable and justified in terms of the proposed tasks and the anticipated results and benefits; and,

(2) Extent to which the fiscal control and accounting procedures are adequate to ensure prudent use, proper and timely disbursement, and an accurate accounting of funds received under this announcement.

Review and Selection Process

Each application submitted to the OPHS Office of Grants Management will be screened to determine whether it was received by the closing date and time.

The results of a competitive review are a primary factor in making funding decisions. In addition, Federal staff will conduct administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the Deputy Assistant Secretary for Population Affairs (DASPA). The DASPA may also solicit and consider comments from others within DHHS in making funding decisions. Final grant awards decisions will be made by the DASPA. The DASPA will fund those projects which will, in his/her judgment, best promote the purposes of this program, within the limits of funds available for such projects.

## VI. Award Administration Information

*1. Award Notices*

The OPA does not release information about individual applications during the review process. When final decisions have been made, successful applicants will be notified by letter of the outcome of the final funding decisions. The official document notifying an applicant that a project as been approved for funding is the Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer, which sets forth the amount of funds granted, the terms and conditions of the award, the effective date of the grant, the budget period for which initial support will be given, and the total project period for which support is contemplated. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

*2. Administrative and National Policy Requirements*

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions in 45 CFR parts 74 (non-governmental) and 92 (governmental) currently in effect or implemented during the period of the grant.

The DHHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

*3. Reporting Requirements*

A successful applicant under this notice will submit: (a) Progress reports; (b) annual Financial Status Reports; and (c) a final performance report, including an evaluation report, and Financial Status Report. Reporting formats are established in accordance with provisions of the general regulations which apply under 45 CFR parts 74 and 92. Applicants must submit all required reports in a timely manner, in recommended formats, and submit a final report on the project, including any information on evaluation results, at the completion of the project period.

The final performance report should contain an overview of the program from start to finish, including information on: (a) Summary of the project, (b) state of the major goals and objectives of the project, (c) list of significant accomplishments, (d) description of innovative features, (e) statement of significant problems encountered and solutions developed, (f) a complete written disclosure of any invention, curriculum, publication, video, pamphlet conceived or produced as part of the grant funded project, (g) a copy of any products developed in association with the project. The final evaluation report should reflect an assessment of the program. It should describe factors contributing to both program success and problem areas. The report should include a description of the project's objectives, interventions, evaluation model and hypotheses, findings, and conclusions. The report should include a summary of the program statistics and findings. It should discuss the implications of project findings as they relate to the project objectives, as well as a set of recommendations based on the findings (where appropriate). The appendices to the evaluation report should include any data collection instruments and relevant references. Copies of any published articles, based on the project or project evaluation findings are also requested.

Agencies receiving $500,000 or more in total Federal funds are required to undergo an annual audit as described in OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

## VII. Agency Contacts

For application kits, submission of applications, and information on budget and business aspects of the application, please contact: WilDon Solutions, Office of Grants Management Operations Center, 1515 Wilson Blvd., Third Floor Suite 310, Arlington, VA 22209 at 1–888–203–6161, e-mail *OPHSgrantinfo@teamwildon.com,* or fax 703–351–1138.

*Program Office Contact:* Evelyn Kappeler, Department of Health and Human Services, Office of Public Health and Science, Office of Population Affairs, 1101 Wootton Parkway, Suite 700, Rockville, Maryland 20852. E-mail: *Evelyn.Kappeler@hhs.gov;* telephone: 240–453–2837.

Dated: April 2, 2007.

**Evelyn M. Kappeler,**

*Acting Director, Office of Population Affairs.*

[FR Doc. E7–6433 Filed 4–5–07; 8:45 am]

BILLING CODE 4150–28–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research Cooperative Agreement To Promote the Health of People With Intellectual Disabilities, Request for Application (RFA) DD07–012

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned SEP:

*Time and Date:* 12 p.m.–4 p.m., May 31, 2007 (Closed).

*Place:* Teleconference.

*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 applications received in response to RFA DD07–012, ''Research Cooperative Agreement to Promote the

Health of People with Intellectual Disabilities.''

*Contact Person for More Information:* Juliana Cyril, Ph.D., Associate Director for Policy and Peer Review, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop D72, Atlanta, GA 30333, Telephone 404.639.4639.

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. E7–6444 Filed 4–5–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10003, CMS–901A and D, CMS–9044, CMS–R–193 and CMS–10066]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (NDMC), and the Notice of Denial of Payment (NDP) and supporting regulations in 42 CFR 422.568; *Use:* Section 1852(g)(1)(B) of the Statute requires Medicare Health organizations (Medicare Advantage, cost, and Health Care Prepayment Plans) to provide determinations to deny coverage (*i.e.*, medical services or payment) in writing and include a statement in understandable language of the reasons for the denial and a description of the reconsideration and appeals processes. These notices fulfill the regulatory requirement. *Form Number:* CMS–10003 (OMB#: 0938–0829); *Frequency:* Reporting: Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 454; *Total Annual Responses:* 105,138; *Total Annual Hours:* 26285.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS Application for Federal Qualification (901A); CMS Medicare Agreement Application (901D) and Supporting Regulations in 42 CFR Section 417.143 and 422.6; *Use:* Prepaid health plans must meet certain regulatory requirements to be federally qualified health maintenance organizations or to enter into a contract with CMS to provide health benefits to Medicare beneficiaries. The application forms are used by CMS to collect information about a health plan to determine their compliance with Federal regulations. *Form Number:* CMS–901A and D (OMB#: 0938–0470); *Frequency:* Reporting: Once; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 55; *Total Annual Responses:* 55; *Total Annual Hours:* 2,200.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare ESRD Exceptions; *Use:* This information is collected in accordance with section 2145 of the Omnibus Budget Reconciliation Act of 1981 and section 623 of the Medicare Prescription Drug Improvement and Modernization Act of 2003. End Stage Renal Disease (ESRD) facilities can file for an exception to its composite payment rate. CMS uses the information submitted to determine whether an ESRD facility qualifies for a rate increase and the amount of the increase. *Form Number:* CMS–9044 (OMB#: 0938–0296); *Frequency:* Reporting: Occasionally; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 400.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare and Medicare Advantage Programs; Notification Procedures for Hospital Discharges—Important Message from Medicare *Use:* Requirements that hospitals notify beneficiaries in inpatient hospital settings of their rights as a hospital patient including their discharge appeal rights are referenced in Section 1866(a)(1)(M) of the Social Security Act (The Act). The authority for the right to an expedited determination is set forth at Section 1869(c)(3)(C)(iii)(III) of the Act. Under sections 42 CFR 405.1205 and 422.620, the hospital must deliver valid, written notice, the Important Message from Medicare (IM), of a patient's rights as a hospital patient including the discharge appeal rights, within 2 calendar days of admission. A follow-up copy of the signed IM is given again as far as possible in advance of discharge, but no more than 2 calendar days before. Follow-up notice is not required if the provision of the admission IM, falls within 2 calendar days of discharge.

Several changes are being proposed to the IM, including but not limited to the following: 1. Patient Information section: CMS removed the ''Date of Notice'' line. 2. Your Rights as Hospital Inpatient section: (a) There are several proposed clarifying language updates. (b) CMS added a bullet stating that the beneficiary can call the Quality Improvement Organization (QIO) for quality of care concerns based on information currently contained in the Medicare and You 2007 booklet. 3. Your Hospital Discharge and Medicare Appeal Rights section: CMS added a bullet stating that the beneficiary may call 1–800 Medicare and added supporting rational for when to call. 4. CMS added instructions for the beneficiary or representative to both sign and date the notice and, 5. CMS added an ''Additional Information'' space requesting that hospitals be able to add signature lines for hospital staff documentation. *Form Number:* CMS–R–193 (OMB#: 0938–0692); *Frequency:* Reporting: Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 6000; *Total Annual Responses:* 13,000,000; *Total Annual Hours:* 3,250,000.

5. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare and Medicare Advantage Programs; Notification Procedures for Hospital

Discharges—Detailed Notice of Discharge; *Use:* The authority for the right to an expedited determination is set forth at Section 1869(c)(3)(C)(iii)(III) of the Social Security Act. This collection has been revised and now pertains to sections 42 CFR 405.1206 and 42 CFR 422.622. When a Quality Improvement Organization (QIO) notifies a hospital or Medicare Advantage (MA) organization that a beneficiary/enrollee has requested an expedited determination, the hospital or MA organization must deliver a detailed notice to the beneficiary/enrollee by noon of the day after the QIO's notification. In addition, the title has been revised, and the wording of the notice has been revised to more clearly convey the purpose of the notice. This revised notice fulfills the regulatory requirement; *Form Number:* CMS–10066 (OMB#: 0938–New); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 6057; *Total Annual Responses:* 130,000; *Total Annual Hours:* 130,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: March 29, 2007.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E7–6310 Filed 4–5–07; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Proposed Project: National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program: Phase IV—(OMB No. 0930–0257)—Revision**

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center of Mental Health is responsible for the national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program that will collect data on child mental health outcomes, family life, and service system development and performance.

The national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program will collect data on child mental health outcomes, family life, and service system development and performance. Data will be collected on 27 service systems, and roughly 5922 children and families. Data collection for this evaluation is conducted over a five-year period. The core of service system data will be collected every 18 months throughout the 5-year evaluation period, with a sustainability survey conducted in selected years. Service delivery and system variables of interest include the following: Maturity of system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Child and family outcomes of interest will be collected at intake and during subsequent follow-up sessions at six-month intervals. The outcome measures include the following: child symptomatology and functioning, family functioning, material resources, and caregiver strain. Time-limited studies addressing the cultural competence of services and the role of primary care providers in systems of care will be conducted at selected points during the evaluation period. Internet-based technology will be used for collecting data via Web-based surveys and for data entry and management. The average annual respondent burden is estimated below for the final three years of data collection. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length of time it will take for each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

This revision to the currently approved information collection activities includes: (1) The addition of a Primary Care Study and (2) the addition of a Treatment Effectiveness Study. The Primary Care Study seeks to investigate the role of primary health care practitioners (PCPs) in systems of care and to further understand the impact of services provided within primary care on child and family outcomes. One goal of this study is to identify strategies that help primary care and mental health care providers to work together effectively. Another is to identify ways to integrate PCPs into systems of care. The treatment effectiveness study will examine the relative impact of community-based treatments focused within system of care sites. This study will focus on a community-based practice that has not accumulated research evidence, but rather through community-based implementation has accumulated practice-based evidence.

| Instrument | Respondent | Number of respondents | Total average number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| **System of Care Assessment** | | | | | |
| Interview Guides and Data Collection Forms | Key site informants | [1] 648 | 2 | 1.000 | 1296 |
| Interagency Collaboration Scale (IACS) | Key site informants | 648 | 2 | 0.133 | 173 |
| Caregiver Information Questionnaire (CIQ–IC) | Caregiver | [3] 5,922 | 1 | 0.283 | 1676 |
| Caregiver Information Questionnaire Followup (CIQ–FC) | Caregiver | 5,922 | 3 | 0.200 | 3553 |

| Instrument | Respondent | Number of respondents | Total average number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Caregiver Strain Questionnaire (CGSQ) | Caregiver | 5,922 | [5] 4 | 0.167 | 3956 |
| Child Behavior Checklist (CBCL)/ Child Behavior Checklist 1½–5 (CBCL 1½–5). | Caregiver | 5,922 | 4 | 0.333 | 7888 |
| Education Questionnaire—Revised (EQ–R) | Caregiver | 5,922 | 4 | 0.100 | 2369 |
| Living Situations Questionnaire (LSQ) | Caregiver | 5,922 | 4 | 0.083 | 1966 |
| The Family Life Questionnaire (FLQ) | Caregiver | 5,922 | 4 | 0.050 | 1184 |
| Behavioral and Emotional Rating Scale—Second Edition, Parent Rating Scale (BERS–2C). | Caregiver | [6] 5,626 | 4 | 0.167 | 3758 |
| Columbia Impairment Scale (CIS) | Caregiver | 5,922 | 4 | 0.083 | 1966 |
| The Vineland Screener (VS) | Caregiver | [7] 2,369 | 4 | 0.250 | 2369 |
| Delinquency Survey—Revised (DS) | Youth | [8] 3,553 | 4 | 0.167 | 2374 |
| Behavioral and Emotional Rating Scale—Second Edition, Youth Rating Scale (BERS–2). | Youth | 3,553 | 4 | 0.167 | 2374 |
| GAIN Quick—R: Substance Problem Scale (GAIN) | Youth | 3,553 | 4 | 0.083 | 1180 |
| Substance Use Survey—Revised (SUS) | Youth | 3,553 | 4 | 0.100 | 1421 |
| Revised Children's Manifest Anxiety Scales (RCMAS) | Youth | 3,553 | 4 | 0.050 | 711 |
| Reynolds Adolescent Depression Scale—Second Edition (RADS–2). | Youth | 3,553 | 4 | 0.050 | 711 |
| Youth information Questionnaire—Baseline (YIQ–I) | Youth | 3,553 | 1 | 0.167 | 593 |
| Youth information Questionnaire—Follow-up (YIQ–F) | Youth | 3,553 | 3 | 0.167 | 1780 |
| **Service Experience Study** | | | | | |
| Multi-Sector Service Contacts—Revised (MSSC–RC) | Caregiver | 5,992 | [10] 3 | 0.250 | 4442 |
| Cultural Competence and Service Provision Questionnaire (CCSP). | Caregiver | 5,992 | 3 | 0.167 | 2967 |
| Youth Services Survey (YSS—F) | Caregiver | 5,922 | 3 | 0.117 | 2079 |
| Cultural Competence Practices Study (Focus Groups—F) | Caregiver | 36 | 1 | 1.500 | 54 |
| Youth Services Survey (YSS—Y) | Youth | 3,553 | 4 | 0.083 | 1180 |
| Cultural Competence Practices Study (Focus Groups—Y) | Youth | 36 | 1 | 1.500 | 54 |
| Cultural Competence Practices Study (Focus Groups—P) | Provider | 60 | 1 | 1.500 | 90 |
| **Treatment Effectiveness Study** | | | | | |
| Diagnostic Interview Schedule for Children (DISC—Predictive Scales). | Caregiver | 262 | 1 | 1.000 | 262 |
| Conflict Behavior Questionnaire (CBQ) | Caregiver | 240 | 4 | .167 | 160 |
| Family Assessment Measure (FAM) | Caregiver | 240 | 4 | .250 | 240 |
| Therapeutic Alliance Scale—caregiver (TAS) | Caregiver | 240 | 3 | .167 | 120 |
| Ohio Scales (caregiver) | Caregiver | 240 | 4 | .250 | 240 |
| Therapy Adherence Form—Revised | Caregiver | 240 | 1 | .167 | 40 |
| Therapeutic Alliance Scales—youth (TAS–Y) | Youth | 192 | 4 | .167 | 128 |
| Ohio Scales—youth | Youth | 192 | 4 | .250 | 192 |
| Evidence-Based Practices Provider Attitudes Scale | Provider | 50 | 1 | .083 | 4 |
| **Family Education and Support Study** | | | | | |
| Beck Depression Inventory (BDI) | Caregiver | 300 | 3 | .117 | 105 |
| Parenting Sense of Competence Scale (PSOC) | Caregiver | 300 | 3 | .167 | 150 |
| Alabama Parenting Questionnaire (APQ) | Caregiver | 300 | 3 | .117 | 105 |
| Duke Social Support Scale | Caregiver | 300 | 3 | .067 | 60 |
| Vanderbilt Mental Health Services Self-Efficacy Questionnaire. | Caregiver | 300 | 3 | .050 | 45 |
| FES—Focus groups | Caregiver | 54 | 1 | 1.500 | 81 |
| FES—Focus groups | Provider | 54 | 1 | 1.500 | 81 |
| FES—Interview | Provider/Administrator. | 12 | 1 | 1.000 | 12 |
| **Primary Care Provider Study** | | | | | |
| Primary Care Provider Survey | Provider | 540 | 1 | .500 | 270 |
| **Sustainability Study** | | | | | |
| Sustainability Survey—Caregiver | Caregiver [12] | 27 | 2 | 0.500 | 27 |
| Sustainability Survey—Provider | Provider/Administrator [12]. | 81 | 2 | 0.500 | 81 |

| | Number of distinct respondents | Number of responses per respondent | Average 3-year burden per response (hours) | Total burden (hours) |
|---|---|---|---|---|
| **Summary of Annualized Burden Estimates for 3 Years** | | | | |
| Caregivers | 5,922 | 1.13 | 2.08 | 13,954 |
| Youth | 3,553 | 1.19 | 1.00 | 4,220 |
| Provider/Administrators | 648 | .542 | 1.90 | 669 |
| Total Summary | 10,123 | | | 18,844 |
| Total Annual Average Summary | 3,374 | | | 6,281 |

[1] An average of 24 stakeholders in up to 27 grantee sites will complete the System of Care Assessment interview. These stakeholders will include site administrative staff, providers, agency representatives, family representatives, youth and youth coordinators.

[2] Assuming the average annual income across all types of staff/service providers/administrators is $40,000, the wage rate was estimated using the following formula: $40,000 (annual income)/2080 (hours worked per year) = $19.25 (dollars per hour).

[3] Number of respondents across 27 grantees. Average based on a 5 percent attrition rate at each data collection point. These data are collected as part of the grantees' routine intake processes. Hence, burden is calculated only for the subset of the Cross-Sectional Descriptive Study sample that also participates in the Child and Family Outcome Study.

[4] Given that 65 percent of the families in the Phase III evaluation sample fall at or below the 2005 DHHS National Poverty Level of $19,350 (based on family of four), the wage rate was estimated using the following formula: $19,350 (annual family income)/2080 (hours worked per year) = 9.30 (dollars per hour).

[5] Average number of responses per respondent based on 6 data collection points for children recruited in year 3, 4 for children recruited in year 4, 2 for children recruited in year 5 (of grantee funding).

[6] Estimated number of caregivers with children over age 5, based on Phase IV preliminary needs-assessment that 95 percent of children served will be over age 5.

[7] Estimated number of caregivers with children under age 12, based on Phase IV preliminary needs-assessment that 40 percent of children served will be under age 12.

[8] Based on Phase III finding that approximately 60 percent of the children in the evaluation were 11 years old or older.

[9] Based on the Federal minimum wage rate of $5.15 per hour.

[10] Respondents only complete Service Experience Study measures at follow-up points. Average number of follow-up responses per respondent based on 6 follow-up data collection points for children recruited in year 3, 4 for children recruited in year 4, and 2 for children recruited in year 5 (of grantee funding).

[11] Assuming the average annual income across all types of staff/service providers is $31,200, the wage rate was estimated using the following formula: $31,200 (annual income)/2080 (hours worked per year) = $15.00 (dollars per hour).

[12] 25 respondents will be caregiver and 75 respondents will be administrators/providers.

Written comments and recommendations concerning the proposed information collection should be sent May 7, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: April 3, 2007

**Elaine Parry,**

*Acting Director, Office of Program Services.*

[FR Doc. E7–6481 Filed 4–5–07; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket Number DHS 2006–0082]**

### Privacy Act; Biometric Storage System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974, the Department of Homeland Security, U.S. Citizenship and Immigration Services, proposes to add a new system of records to the Department's inventory, entitled Biometric Storage System. This new system will replace the following existing legacy systems, the Image Storage and Retrieval System (ISRS), 64 FR 18052, and portions of the Biometric Benefit Support System (BBSS).

**DATES:** The established system of records will be effective May 7, 2007 unless comments are received that result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by Docket Number DHS 2006–0082 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 1–866–466–5370.
- Mail: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** For system related questions please contact: Phyllis Howard, Branch Chief of Application Support for Office of Field Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has been tasked by Congress with processing all immigration benefit applications and petitions. Many applications, petitions, and other benefits (hereinafter referred to as ''applications'') require that fingerprints and other biometrics be captured in order to conduct background checks, to verify the applicant's, petitioner's, or beneficiary's (hereinafter referred to as ''applicants'') identity, and to produce benefit cards with biometrics and documents. In order to fulfill its statutory mandate, USCIS is establishing a new system of records that will consolidate all biometrics collected by USCIS into one centralized system. This new system of

records is called the Biometric Storage System (BSS).

**I. USCIS Biometric Storage**

Implemented as a part of a USCIS enterprise-wide ''Transformation Program,'' BSS will help transition the agency's data management practices to a paperless, more centralized, and unique identity driven methodology. BSS will become the centralized repository for all biometric data captured by USCIS from applicants filing immigration applications. This new system will eventually replace existing legacy systems, including the Image Storage and Retrieval System (ISRS), 64 FR 18052, and portions of the Biometric Benefit Support System (BBSS).

USCIS captures biometric data from applicants to facilitate three key operational functions: (1) Conducting fingerprint-based background checks; (2) verifying an applicant's identity; and (3) producing benefit cards/documents. Currently, USCIS does not have a centralized, long-term storage program for fingerprint biometrics. Accordingly, applicants are sometimes required to return to an USCIS Application Support Center (ASC) to provide fingerprints again during the case adjudication process. BSS will store the biometric information, thereby decreasing the burden on applicants by negating the need to provide multiple sets of biometric data.

Further, BSS will consolidate storage of information from multiple, separate systems into a centralized database, allowing for greater control, security, and management of the data. BSS also will provide increased functionality over current systems, and improved communication between government databases and personnel, facilitating more efficient processing of applications. This furthers USCIS's goals of reducing immigration benefit and petition case backlog, and improving the process for vetting and resolving applications for immigration benefits.

*a. Fingerprint-Based Background Checks*

Under BSS, biometric and associated biographic information will be collected from the applicant in order to conduct fingerprint-based background checks through the Federal Bureau of Investigation (FBI) and United States Visitor and Immigrant Status Indicator Technology (US–VISIT).

Fingerprints will be taken electronically at an USCIS ASC or from hard copy fingerprint cards (FD–258) that are submitted for those applicants who are unable to go to an ASC. These fingerprints, along with other biometric and limited biographical data collected from the applicant, will be assembled into a National Institute of Standard and Technology (NIST) approved Electronic Fingerprint Transmission Specification (EFTS) file and transferred to BSS from the ASCs. BSS will then submit the 10-print fingerprints and limited biographic information to, and receive results from, the FBI's Integrated Automated Fingerprint Identification System (IAFIS). The FBI fingerprint check is a search of the FBI's Criminal Master File, which will identify applicants and petitioners who have arrest records. The fingerprint check responses received from the FBI are interpreted as ''classifiable'' or ''unclassifiable,'' and that classification is stored in BSS. A classifiable fingerprint set denotes that the FBI was able to utilize the fingerprints in the course of their matching processes. An unclassifiable fingerprint set denotes that the FBI was unable to utilize the fingerprints in the course of their matching processes. If applicable, the FBI Identification Record, which details an applicant's criminal history, will be transmitted by BSS to USCIS's Background Check Service (BCS), 71 FR 70414, for storage and not retained in BSS.

BSS will also submit the 10-print fingerprints, photograph, and limited biographic information to, and receive results from, US–VISIT/IDENT 71 FR 42651. The US–VISIT/IDENT fingerprint check is a search of US–VISIT's entire fingerprint database, which will identify applicants and petitioners who have entered or exited the country previously, as well as those for whom wants and warrants may be outstanding, or who otherwise may be the subjects of ongoing law enforcement or investigative activity. This information, referred to as the US–VISIT/IDENT information file, will be transmitted by BSS to USCIS's BCS for storage and not retained in BSS. The US–VISIT/IDENT check will also return a unique enumerator for any currently enrolled 10-print fingerprints. The unique enumerator is based on and assigned to an applicant's unique fingerprint biometric signature. If US–VISIT/IDENT does not find a match, the system will enroll the 10-print fingerprints, generate a unique enumerator, and return that number to BSS.

The results of these fingerprint checks will be used to make eligibility determinations, which will result in the approval or denial of a benefit. If fraudulent or criminal activity is detected as a result of the fingerprint check, information may be referred to appropriate law enforcement agencies including Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), FBI, or other federal, state, local, tribal, foreign, or international law enforcement agencies.

*b. Card Production Information in BSS*

USCIS issues cards to individuals who have been granted immigration benefits such as Permanent Resident Cards and Border Crossing Cards. BSS will store information regarding benefit card and document production, including but not limited to photographs, signatures, press-prints (one fingerprint image, typically the index finger), and card production status.

BSS also will interface with the National Card Production System II / Integrated Card Production System (NPS II/ICPS) and the Computer-Linked Application Information System 3 (CLAIMS 3) 62 FR 64132 system of records. Specifically, BSS and NPS II/ICPS will share data linked with benefit cards and documents, including but not limited to: Card serial number; receipt number; production site; production date; class of admission; type of benefit card or document; and expiration date. BSS and CLAIMS 3 will share data related to benefit case adjudication, including the case status and card production status.

*c. Collection and Use of Information in BSS*

The data collected in BSS during the background check process provides USCIS with information about an applicant or petitioner that may have national security or public safety implications, or which may contain indicia of fraud. Collection and use of this information will enable DHS to take action to prevent potentially undesirable and often dangerous people from staying in this country, thereby supporting two primary missions of DHS: (1) Preventing terrorist attacks within the United States and reducing America's vulnerability to terrorism; and (2) facilitating the adjudication of lawful benefit applications.

All information to be stored in BSS is currently collected as part of the established USCIS application/petition process. The requested data is required to verify the applicant's identity and eligibility for the benefit being sought. ICE, CBP, and the Department of State (DoS) also will have read-only access to the BSS through a web-based user interface. This interface will allow the stated users to access and view biometric and limited biographic

information for identity verification purposes.

Consistent with DHS's information sharing mission, information collected and stored in the BSS may be provided by USCIS to appropriate federal, state, local, tribal or foreign governmental agencies or multi-lateral government organizations where DHS determines that sharing the information will assist in the enforcement of civil or criminal laws.

As mentioned previously, US–VISIT/IDENT will also receive a copy of the applicant's 10-print fingerprints, photograph, and limited biographic information. The information stored in US–VISIT/IDENT, including information received from BSS, may be shared with other DHS components, as well as appropriate Federal, state, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice and the US–VISIT/IDENT system of records notice (71 FR 42651).

## II. The Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United Stated Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other particular assigned to an individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals reading the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

**DHS/USCIS–2006–0082**

**SYSTEM NAME:**

DHS/USCIS—003 Biometric Storage System (BSS)

**SECURITY CLASSIFICATION:**

Sensitive; Unclassified.

**SYSTEM LOCATION:**

The primary BSS system is located at a Department of Homeland Security (DHS) approved data center in the Washington, DC, metropolitan area. Backups are maintained offsite. BSS will be accessible worldwide from all USCIS field offices, service centers, and application support centers in the DHS Network.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All individuals who are applying for benefits and/or who are petitioning on behalf of individuals applying or petitioning for benefits pursuant to the Immigration and Nationality Act. 8 U.S.C. 1101 *et seq.*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

BSS maintains three general categories of records: (a) Applicant and Petitioner Biometric information; (b) Applicant and Petitioner Biographic Identification information; and (c) Card Production information.

A. *Applicant and Petitioner Biometric information* contains data necessary to perform a fingerprint-based background check through the FBI and US–VISIT/IDENT fingerprint check services, as well as data for verifying an applicant's identity and card production. This data may include: 10-print fingerprint images; photographs; signatures; transaction control numbers associated with FBI fingerprint checks; receipt numbers; date/time of submission; physical description of subject; and a reason for the submission of the application (i.e., a USCIS Form Code). This category also covers the applicants' US–VISIT/IDENT assigned enumerator. The unique enumerator is based on and assigned to an applicant's unique fingerprint biometric signature. If US–VISIT/IDENT does not find a match, the system will enroll the 10-print fingerprints, generate a unique enumerator, and return it to BSS. Lastly, this category covers logs associated with the requests of background checks, which may include requesting location and requesting person.

B. *Applicant and Petitioner Biographic Identification information* includes basic biographic information associated with each applicant or petitioner, including but not limited to: Name; date of birth; country of birth; address; employment status; aliases; application type; height; weight; eye color; gender; hair color; and race. The applicant and petitioner information also includes uniquely identifiable numbers, including but not limited to: Alien Registration Number; Z-number; Receipt Number; Social Security Number; and Armed Forces Identification Number. This information would be obtained from multiple sources, including from the applicant at the time the fingerprints are taken, as well as from the applicant's preexisting case file.

C. *Card Production information* encompasses data received from and sent to NPS II/ICPS and CLAIMS 3. This data may include identifying transactional information (i.e., transaction control number), biographical information used for card production, card production status, benefit card/document type, and class of admission.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

8 U.S.C. 1103 *et seq.*

**PURPOSE(S):**

BSS is a single centralized system that stores all biometric and associated biographic data that USCIS collects. Biometric data and associated biographic data are used by USCIS to conduct background checks, facilitate card production, and accurately identify applicants. Currently, no system exists that centrally manages all of this data. BSS will replace the following existing legacy systems, the Image Storage and Retrieval System, 64 FR 180526, and portions of the Biometric Benefit Support System (BBSS). BBSS is a legacy system that transfers biometric data from USCIS to the FBI to conduct fingerprint-based background checks. BBSS does not store the 10-print fingerprint images. ISRS is a legacy system that stores a limited amount of information related to an applicant's 10-print fingerprint images and card production information. BSS also will add new functionality so the collection of biometric data for USCIS applications may become centrally managed.

US–VISIT/IDENT will also receive a copy of the applicant's 10-print fingerprints, photograph, and limited biographic information. Consistent with DHS's information sharing mission, information stored in US–VISIT/IDENT, including information received from BSS, may be shared with other DHS components, as well as appropriate Federal, state, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving

component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the United States Department of Justice (including United States Attorney offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to the court or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) DHS; (2) any employee of DHS in his or her official capacity; (3) any employee of DHS in his or her individual capacity where DOJ or DHS has agreed to represent said employee; or (4) the United States or any agency thereof;

B. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

C. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements;

D. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

E. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a DHS mission function related to this system of records, in compliance with the Privacy Act of 1974, as amended.

F. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws;

G. To federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

H. To employers participating in the Basic Pilot Verification Program or any successor program thereof, in order to verify the employment eligibility of all newly hired employees in the United States.

I. To a Congressional office, from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

J. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) USCIS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by USCIS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with USCIS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in the system will be stored in a central computer database.

**RETRIEVABILITY:**

A combination of the following BSS data elements may be used to initiate a query in order to retrieve data from the BSS User Interface: An individual's Alien Registration Number; name; date of birth; receipt number; and unique enumerator.

**SAFEGUARDS:**

Information in this system is safeguarded in accordance with applicable laws and policies, including the DHS information technology security policies and the Federal Information Security Management Act (FISMA). All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature, which provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

**RETENTION AND DISPOSAL:**

The following proposal for retention and disposal is pending approval by the National Archives and Records Administration. Records are stored and retained in the BSS Repository for seventy-five (75) years, from the date of last action on the file. BSS is utilizing ISRS' retention schedule as a model. Biometric-based background checks are conducted on individuals and/or petitioners from the age of fourteen (14) and up. The 75-year retention rate comes from the length of time USCIS may interact with a customer. Further, retaining the data for this period of time will enable USCIS to fight identity fraud and misappropriation of benefits.

**SYSTEM MANAGER(S) AND ADDRESS:**

Branch Chief of Application Support for Office of Field Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529.

**NOTIFICATION PROCEDURE:**

To determine whether this system contains records relating to you, write the USCIS Freedom of Information Act/Privacy Act officer. Mail requests to: U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010.

**RECORD ACCESS PROCEDURES:**

Follow ''Notification procedures'' above.

**CONTESTING RECORD PROCEDURES:**

Redress procedures are established and operated by the program through which the data was originally collected. In the case of redress requests for DHS organizations, if an individual is not satisfied with the response, an individual can appeal his or her case to the DHS Chief Privacy Officer, who will conduct a review and provide final adjudication on the matter.

**RECORD SOURCE CATEGORIES:**

Information contained in this system of records is obtained from other USCIS Systems of Records; including, CLAIMS3, NPS II/ICPS, and electronic live scan devices located at ASCs. Information contained in the system is also obtained from the Federal Bureau of Investigation, and the United States Visitor and Immigrant Status Indicator Technology. All information contained in BSS is derived from the above systems.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Dated: March 28, 2007.

**Hugo Teufel III,**

*Chief Privacy Officer.*

[FR Doc. 07–1643 Filed 4–5–07; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### National Communications System

**[Docket No. NCS–2007–0002]**

### National Security Telecommunications Advisory Committee

**AGENCY:** National Communications System, DHS.

**ACTION:** Notice of Partially Closed Advisory Committee Meeting.

**SUMMARY:** The President's National Security Telecommunications Advisory Committee (NSTAC) will meet in a partially closed session.

**DATES:** Thursday, April 26, 2007, from 1:15 p.m. until 5 p.m.

**ADDRESSES:** The meeting will take place at the U.S. Chamber of Commerce, 1615 H St., NW., Washington DC. For access to the meeting materials, contact Mr. William Fuller at (703) 235–5521 or by e-mail at *william.c.fuller@dhs.gov* by 5 p.m. on Friday, April 20, 2007. If you desire to submit comments, they must be submitted by May 3, 2007. Comments must be identified by NCS–2007–0002 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: NSTAC1@dhs.gov.* Include docket number in the subject line of the message.
- *Mail:* Office of the Manager, National Communications System (N5), Department of Homeland Security, CS&T/NCS/N5, 245 Murray Lane, Mail Stop 8510, Washington, DC 20528.
- *Fax:* 1–866–466–5370

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and NCS–2007–0002, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kiesha Gebreyes, Chief, Industry Operations Branch at (703) 235–5525, e-mail: *Kiesha.Gebreyes@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, IP/NCS/N5, 245 Murray Lane, Mail Stop 8510, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:** The NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.1 *et seq.*).

At the upcoming meeting, between 1:15 p.m. and 2:15 p.m., the NSTAC will receive comments from government stakeholders, discuss the work of the Emergency Communications and Interoperability Task Force (ECITF), and discuss and vote on the International Task Force (ITF) Report. This portion of the meeting will be open to the public.

Between 2:30 p.m. and 5 p.m., the NSTAC will discuss Global Infrastructure Resiliency (GIR) and Cyber Security. This portion of the meeting will be closed to the public.

Persons with disabilities who require special assistance should indicate this when arranging access to the teleconference and are encouraged to identify anticipated special needs as early as possible.

*Basis for Closure:* The GIR and Cyber Security discussions will likely involve sensitive infrastructure information concerning system threats and explicit physical/cyber vulnerabilities related to current communications capabilities. Public disclosure of such information would heighten awareness of potential vulnerabilities and increase the likelihood of exploitation by terrorists or other motivated adversaries. Pursuant to Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*), the Department has determined that this discussion will concern matters which, if disclosed, would be likely to frustrate significantly the implementation of a proposed agency action. Accordingly, the relevant portion of this meeting will be closed to the public pursuant to the authority set forth in 5 U.S.C. 552b(c)(9)(B).

Dated: March 23, 2007.

**Sallie McDonald,**

*Director, National Communications System.*

[FR Doc. E7–6418 Filed 4–5–07; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request

**ACTION:** 60-Day notice of information collection under review; Form I–817, Application for Family Unity Benefits; OMB Control No. 1615–0005.

The Department Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 5, 2007.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Officer, 111 Massachusetts Avenue, 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control No. 1615–0005 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of this Information Collection**

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–817; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR part 245A, Subpart C.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,000 annual burden hours.

If you have comments, suggestions, or need a copy of the proposed information collection instrument, please contact USCIS, Chief, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone 202–272–8377.

Dated: April 3, 2007.

**Richard A. Sloan,**

*Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E7–6455 Filed 4–5–07; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5125–N–14]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 29, 2007.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

[FR Doc. E7–6165 Filed 4–5–07; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Friday, May 18, 2007.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on May 18, 2007 at 9 a.m. at Blackstone Public Library located at 86 Main Street, Blackstone, MA for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Thomas E. Ross, Acting Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Thomas E. Ross, Acting Executive Director of the Commission at the aforementioned address.

**Thomas E. Ross,**

*Acting Executive Director, BRVNHCC.*

[FR Doc. E7–6476 Filed 4–5–07; 8:45 am]

BILLING CODE 4310–RK–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–330–1430–EQ–2920; IDI–34904]**

### Notice of Realty Action; 10-Year Lease of Public Land, Custer County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and determined that one parcel of public land, approximately 47 acres, located in Custer County, Idaho is suitable for a renewable, 10-year agricultural use lease to Karen and Sydney Dowton (Lessee), pursuant to Section 302(b) of the Federal Land Policy Management Act of 1976, as amended. Annual rental will be at no less than the appraised fair market value.

**DATES:** Interested parties may submit comments to the BLM Challis Field Office Manager, at the below stated address. Comments must be received by not later than May 21, 2007. Only written comments will be accepted.

**ADDRESSES:** Address all written comments concerning this Notice to David Rosenkrance, BLM Challis Field Manager, 801 Blue Mountain Rd., Challis, Idaho 83226–9304.

**FOR FURTHER INFORMATION CONTACT:** Tim Vanek, Realty Specialist, at the above address or call: (208) 879–6218.

**SUPPLEMENTARY INFORMATION:** On January 12, 2004, Interior Board of Land Appeals (IBLA) oversaw a settlement (IBLA 99–344) between appellant Sydney Dowton and respondent, Bureau of Land Management. Item 3 of the settlement agreement stated: ''Mr. Dowton reserves the right to, and the dismissal of this matter is without prejudice to his right to, file a color-of-title application with the BLM concerning the same Parcel 1 that is at issue here. That color-of-title shall be submitted under the authority of 43 CFR part 2540 and other applicable statutes and regulations. Parcel 1 is generally referred to in this manner as that land located north of the current channel of the Salmon River in lot 2, Section 26, Township 16 North, Range 20 East, of the Boise Meridian.'' Mr. Dowton did file a color-of-title application with the BLM Idaho State Office on March 1, 2004, for Parcel 1. The application was identified as: serial number IDI–34592 and was rejected September 2004, for failing to meet the criteria of suitable color-of-title claim as defined by 43 CFR 2540.0–5(b). Item 7 of the aforementioned settlement stated: ''Should the final agency action on the color-of-title application deny the application, BLM will then lease Parcel 1 to Mr. Dowton for agricultural use pursuant to the provisions of 43 CFR part 2920. The lease will be a land-use authorization offered on a negotiated, non-competitive basis pursuant to 43 CFR Sec. 2920.5–4(b) (10/1/03 Edition). That lease will be for a term of ten years and will be renewable for an additional term.''

The legal description of Parcel 1 is:

Boise Meridian, T. 16 N., R. 20 E, contains 47 acres in Custer County, more or less.
sec. 26, lot 2

After review, the BLM has determined that the proposed use of the above described parcel is in conformance with the Challis Resource Management Plan (RMP) (1999). Compliance can be found under Decision *Land Tenure and Access* under Goal 4. (Eliminate unauthorized use of public lands.) Therefore, pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) and the implementing regulations at 43 CFR part 2920, the BLM will accept for processing an application to be filed by Sydney Dowton, or his duly qualified designee, for a non-competitive lease of the above described lands, to be used for harvest of meadow grass irrigated by a 549′, 6⅝″ diameter center pivot.

A non-competitive lease may be employed in this case because doing so meets the terms of the January 12, 2004, IBLA settlement between Sydney Dowton and the BLM. Furthermore, as provided in 43 CFR 2920.5–4(b), land use authorizations may be offered on a negotiated, non-competitive basis, when, in the judgment of the authorized officer, equities, such as prior use of the lands, exist; if no competitive interest exists; or, where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept that is compatible with the public interest. The Dowtons built the aforementioned center irrigation pivot on the subject parcel between 1994 and 1995 at a cost of approximately $21,000.00. This fact, as well as the history of past use by the Dowtons is further evidence to support the decision to offer a non-competitive lease. The non-competitive bid shall not be for less than market value. That is to say rental value must be based on the market value of the land acceptable to the BLM after taking into account a current independent appraisal of, among other considerations, the highest and best use of the lands. The BLM will not charge processing fees as per: Section 8 (E.) Additional Terms and Conditions of the settlement, which states: ''Each Party is to bear its own costs and attorney fees in this matter leading up to this agreement and for the preparation and implementation of the Agreement. Should either party be required to seek legal actions to enforce or interpret the terms and conditions of this Agreement, attorney fees and costs may be awarded as allowed under the typical law.'' Rent, payable annually or otherwise in advance, will be determined by the BLM, if and when a lease application is granted and periodically thereafter.

The lease application must include a reference to this notice and comply in all respects with the regulations pertaining to land use authorization applications at 43 CFR 2920.5–2 and 2920.5–5(b).

If authorized, the lease would be subject to valid existing rights.

On or before May 21, 2007, interested parties may submit comments to the BLM at the address stated above with respect to:

(1) The decision of the BLM regarding the availability of the lands described herein and

(2) The decision of the BLM to accept for processing an application from Sydney Dowton for a non-competitive lease.

In addition to the right reserved in 43 CFR 2920.7, the United States (Lessor) shall reserve all leasable, locatable, and salable mineral resources and deposits in the subject parcel together with the right to prospect for, mine, and remove the same under applicable laws and regulations. The lease, when issued, will contain a covenant requiring the Lessee assign in the name of the Lessor that amount of water applied to the subject parcel during the use of the subject parcel. In the event the application of water to the public land ceases, this assignment shall terminate and full water right shall revert back to the sole ownership of Karen and Sydney Dowton.

Comments must be received by the BLM Challis Field Manager, Idaho Falls District Office, at the address stated above, on or before the date stated above. Any adverse comments will be reviewed by the Idaho Falls District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections, or adverse comments, this proposed realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2920.4)

Dated: February 5, 2007.

**Joe Kraayenbrink,**

*District Manager, Idaho Falls District.*

[FR Doc. E7–6410 Filed 4–5–07; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–070–1430–EU; NMNM–116843]**

### Notice of Realty Action: Non-Competitive (Direct) Sale of Public Lands in San Juan County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described public lands, comprising approximately 200 acres in San Juan County, New Mexico, have been examined and found suitable for sale to San Juan County, at not less than the fair market value of $400,000, for use as an industrial park. The sale will be conducted under the authority of Section 203(f)(2) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et seq.* (FLPMA), and CFR 2711.3–3(a), and will take place according to the procedures governing direct sales of public land.

**DATES:** On or before May 21, 2007, interested parties may submit comments concerning the proposed sale to Bureau of Land Management (BLM), Farmington Field Office at the address stated below.

**ADDRESSES:** Information related to this action, including the environmental assessment, is available for review at the BLM, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401, from 7:45 a.m. to 4:30 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Albert Gonzales, Realty Specialist at (505) 599–6334.

**SUPPLEMENTARY INFORMATION:** The land contains 200 acres, more or less, located 13 miles north of Farmington, New Mexico. This parcel of land, situated in San Juan County, is being offered on a non-competitive (direct) sale basis to San Juan County, in accordance with section 203(f)(2) of 6 (FLPMA) and 43 CFR 2711.3–3(a), for use as an industrial park. The BLM Farmington District Manager has determined that a non-competitive (direct) sale will be in the best interest of the public to facilitate growth and business opportunities for San Juan County. FLPMA authorizes the use of direct sales of the public lands in circumstances where that tract has been identified for transfer to a State or local government as an integral part of the project and speculative bidding would jeopardize a timely completion and the economic viability of the project. The BLM proposes to convey the identified tract to a local government as an integral part of such a project. The parcel is being offered for sale at no less than the appraised fair market value (FMV) of $400,000, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a State certified appraiser for the purposes of establishing FMV. The land proposed for sale is described as:

**New Mexico Principal Meridian**

T. 32 N., R. 13 W.,

Sec. 23: S½NE¼SE¼, NE¼NW¼SE¼, S½NW¼SE¼, and S½SE¼;

Sec. 26: NE¼NE¼ and NE¼NW¼NE¼; The area described contains approximately 200 acres in San Juan County.

This land is not required for any Federal purposes. The proposed action is in compliance with the BLM Farmington Resource Management Plan and approved September 2003. In the event of a sale, conveyance will include the surface interests only. The patent, when issued, will contain the following reservations, covenants, terms, and conditions:

1. The parcel will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. The parcel will be conveyed subject to valid existing rights, including, but not limited to rights-of-ways. The parcel may be subject to applications for rights-of-way received prior to the publication of this Notice if processing the application would not adversely affect the marketability or appraised value of the parcel proposed for sale. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals owned by the United States under applicable laws and any regulations that the Secretary of Interior may prescribe, including all necessary access and exit rights.

3. The patentee, by accepting a patent, covenants and agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property that has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State, and local environmental and regulatory provisions, throughout the life of the facility, including any closure and/or post-closure requirements that may be imposed with respect to any physical plant and/or facility upon the real property under any Federal, State or local environmental laws or regulatory provisions. This covenant shall be construed as running with the above described parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind express or implied is given or will be given by the United States as to the title, physical condition or potential uses of the land proposed for sale. However, to the extent required by law, such land is subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S. C. 9620(h)).

The publication of this Notice in the **Federal Register** shall segregate the public lands covered by this Notice to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the Notice segregates the

lands from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a patent or other document of conveyance for such lands, upon publication in the **Federal Register** of a termination of the segregation, or April 6, 2009, whichever occurs first, unless extended by the BLM State Director in accordance with 43 CFR 2611.1–2(d), prior to the termination date.

Interested parties may submit comments to the District Manager, BLM Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401 until 45 days after the date of publication of this notice in the **Federal Register**. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. 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. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The BLM may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws.

The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

**Authority:** 43 CFR 2711.1–2(c).

Dated: February 22, 2007.

**Joel Farrell,**

*Assistant Field Manager, Farmington, New Mexico.*

[FR Doc. E7–6411 Filed 4–5–07; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Colorado: Filing of Plats of Survey

March 29, 2007.

*Summary:* The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., March 29, 2007. All inquiries should be sent to the Colorado State Office (CO–956), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat and field notes, of the dependent resurvey of the Colorado-New Mexico State Line (S. bdy.), the east and west boundaries, and the subdivisional lines of Township 32 North, Range 18 West, of the New Mexico Principal Meridian, Colorado, were accepted on November 15, 2006.

The plat which includes the field notes, and is the entire record of this Corrective Dependent Resurvey in Township 35 North, Range 16 West, New Mexico Principal Meridian, Colorado, was accepted on December 21, 2006. This survey was made as a result of an field error made during the dependent resurvey in 1985–86.

The plat, which includes the field notes, and is the entire record of this resurvey, in Section 33, Township 36 North, Range 11 West, New Mexico Principal Meridian, Colorado, was accepted on January 10, 2007.

The supplemental plat of Section 18, in Township 1 North, Range 78 West, Sixth Principal Meridian, Colorado, was accepted on January 23, 2007.

The plats (2) and field notes, of the dependent resurvey and surveys in Township 50 North, Range 9 West, New Mexico Principal Meridian, Colorado, were accepted on January 24, 2007.

The plat and field notes of the dependent resurvey and surveys in Township 37 North, Range 19 West, New Mexico Principal Meridian, Colorado were accepted on January 25, 2007.

The plat, which includes the field notes, and is the entire record of this survey, in Section 8, Township 32 North, Range 3 West, New Mexico Principal Meridian, Colorado was accepted on January 30, 2007.

The supplemental plat of Township 50 North, Range 18 West, New Mexico Principal Meridian, Colorado, was accepted on February 1, 2007. This supplemental plat, shows the result of the cancellation of certain mineral surveys in Sections 3, 4, 9, and 14.

The plat, which includes the field notes, and is the entire record of the location and remonumentation of certain original corners in, Township 7 North, Range 91 West, Sixth Principal Meridian, Colorado, was accepted on February 5, 2007.

The plats (2) which include the field notes, and are the entire record of the location and remonumentation of certain original corners in, Townships 8 North, Ranges 100 and 101 West, Sixth Principal Meridian, Colorado, were accepted on February 5, 2007.

The plats (4) and field notes, of the dependent resurveys and surveys, in Townships 5 and 6 North, Range 92 West, Sixth Principal Meridian, Colorado, were accepted on February 13, 2007.

The plat and field notes, of the dependent resurveys and surveys, of Sections 1 and 2, in Township 36 North, Range 6 West, New Mexico Principal Meridian, Colorado, were accepted on March 1, 2007.

The supplemental plat of Section 21, Township 41 North, Range 2 West, New Mexico Principal Meridian, Colorado, was accepted on March 7, 2007. This supplemental plat, shows the redesignation of lot 4 to regular aliquot parts and complies with the description shown in Patent No. 1133510.

The plats (2) and field notes, of the metes and bounds surveys of portions of the east boundary of the Great Sand Dunes National Preserve, in Township 25 South, Range 72 West, (Medano Pass) and Township 24 South, Range 73 West (Music Pass) of the Sixth Principal Meridian, Colorado, were accepted on March 15, 2007.

The plat and field notes, of the dependent resurvey and section subdivision of Sections 5, 8 and 20, Township 45 North, Range 5 East, New Mexico Principal Meridian, Colorado, was accepted on March 21, 2007.

**Randall M. Zanon,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. E7–6417 Filed 4–5–07; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft General Management Plan/ Environmental Impact Statement, John Day Fossil Beds National Monument, Grant and Wheeler Counties, OR; Notice of Termination of the Environmental Impact Statement

**SUMMARY:** The National Park Service is terminating preparation of an Environmental Impact Statement (EIS) for the General Management Plan, John Day Fossil Beds, Oregon. A Notice of Intent to prepare an EIS for the John Day Fossil Beds National Monument General Management Plan was published in the **Federal Register** on September 24, 2004 (Vol. 69, No. 185, Pages 57362–63). Based in part on the minimal nature of public response to the Notice of Intent, the National Park Service has since determined that an Environmental Assessment rather than an EIS is the appropriate environmental

documentation for this general management plan update.

**SUPPLEMENTARY INFORMATION:** This new general management plan (GMP) will update the overall direction for the national monument, setting broad management goals for managing the area over the next 15 to 20 years. As noted above, the GMP was originally scoped as an EIS. However, few public comments were received in the scoping process. No issues with the potential for controversial impacts were identified for the general management plan. The current GMP was approved in 1979.

In the general management planning process the NPS planning team developed four preliminary alternatives for the national monument, none of which would result in substantial changes in the operation and management of the area. The three ''action'' alternatives primarily focus on maintaining and protecting paleontological and other resources, and expanding interpretation and visitor opportunities where appropriate. The alternatives vary in their treatment of the Cant Ranch cultural landscape, the management of the Hancock mammal quarry, and the development of new trails. Preliminary analysis of the alternatives has revealed no major (nor significant) potential effects on the quality of the human environment, nor any potential for impairment of park resources and values. Most of the impacts from the alternatives are expected to be negligible to minor in magnitude, with the remainder being of a minor to moderate level.

For these reasons the NPS determined that the requisite conservation planning and environmental impact analysis necessary for updating the general management plan can appropriately be completed through preparation of an Environmental Assessment (EA). For further information about this determination or other aspects of the GMP process, please contact: James Hammett, Superintendent, John Day Fossil Beds National Monument, 32651 Highway 19, Kimberly, OR 97848 (telephone: (514) 987–2333; e-mail: *JODA_Superintendent@nps.gov).*

*Decsion Process:* The draft general management plan/EA is expected to be distributed for public comment in the fall/winter of 2007. The NPS will notify the public about release of the draft general management plan/EA by mail, local and regional media, Web site postings, and other means; all announcements will include information on where and how to obtain a copy of the EA, how to comment on the EA, and the length of the public comment period. Following due consideration of public comments and agency consults, at this time a decision is expected be made in the winter of 2008. The official responsible for the final decision on the GMP is the Regional Director; subsequently the responsible official for implementing the approved GMP is the Superintendent, John Day Fossil Beds National Monument.

Dated: January 26, 2007.

**Jonathan B. Jarvis,**

*Director, Pacific West Region.*

[FR Doc. E7–6451 Filed 4–5–07; 8:45 am]

**BILLING CODE 4310–3J–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft Environmental Impact Statement/ General Management Plan, Pinnacles National Monument, San Benito and Monterey Counties, CA; Notice of Intent To Prepare an Environmental Impact Statement

**SUMMARY:** In accord with section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), the National Park Service (NPS) has undertaken a conservation planning and environmental impact analysis process for updating the General Management Plan (GMP) for Pinnacles National Monument. An Environmental Impact Statement (EIS) will be prepared concurrently with the GMP. The GMP will address desired conditions for the Monument, uses or treatment needs for resource protection, visitor use and other management goals thus serving as a ''blueprint'' to guide management of natural and cultural resources and visitor use during the next 15–20 years. This notice supersedes the previous notice published in the **Federal Register** on November 19, 1998 (Vol. 63, No. 223).

*Background:* Pinnacles National Monument preserves an ecologically-rich, geologically-spectacular, and culturally-significant landscape in the Central Coast region of California. Established in 1908 and named for dramatic rock formations that are the remains of an ancient volcano, the Monument preserves a landscape shaped by earthquake, fire, and flood. The Monument is rich in plant and animal life that inhabit the park's chaparral, oak woodland, talus cave, riparian, and rock-and-scree habitats. In 2003, Pinnacles became the home once again to the California condor, one of the nation's most endangered species, elevating the Monument's profile substantially throughout the region.

Pinnacles preserves a rich human history with archeological sites reaching back at least 2,000 years, revealing use by indigenous people. Sites from the 1800s reflect the homesteading history of the area. In the 1930s, the Civilian Conservation Corps played the central role in the development of the Monument that visitors enjoy today, evidenced by roads, a visitor center, numerous park structures, and an outstanding trail system that stands as an important cultural resource in itself.

Located 100 miles south of the greater San Francisco Bay Area, Pinnacles is on the edge of one of the state's most populated and fastest-growing areas. Since 1976, Pinnacles has grown from 16,271 acres to 24,436 acres. In 1976, 15,985 acres were designated by Congress as Wilderness (and several tracts of land since transferred from the BLM bring the Wilderness total acreage to 16,048). Also, acquisition of the 2,000-acre Pinnacles Ranch during the spring of 2006 has added substantial new resources, infrastructure, recreational opportunities, and management challenges.

A new GMP reflecting contemporary issues and challenges facing Pinnacles in the future is essential. The plan will provide direction for park management through the establishment of management zones, user capacities and appropriate types and levels of development and recreational use for all areas of the park. Resource protection, visitor experiences, community relationships, and relationships with neighboring land management agencies will be improved through completion and implementation of the GMP.

*Scoping Process:* The purpose of the scoping outreach efforts is to elicit public comment regarding issues and concerns, the nature and extent of potential environmental impacts (and appropriate mitigation measures) that should be addressed in the plan. Major issues anticipated to be addressed in the EIS include:

- What are the desired conditions for native/endemic ecosystems?
- What are the desired conditions for Wilderness areas?
- What are the desired conditions for cultural resources and cultural landscapes?
- What areas and structures are appropriate for museum collections storage, preservation and accessibility for research?
- What is the desired visitor experience throughout the Monument (east side, west side, high peaks, Bear Gulch, Chalone, Chaparral, Pinnacles

Ranch, campground, backcountry, Wilderness)?

• What are appropriate visitor use levels for different parts of the Monument?

• What transportation options should be considered for providing access to and within the Monument? What types of trail (or other) access are appropriate, and where?

• What is the appropriate level of development in different parts of the Monument, and what areas are appropriate for park administration and operations activities?

• How should the NPS work with nearby communities to encourage community understanding of the Monument and to address potential effects of development and population growth in neighboring communities on ecological, scenic, and Wilderness values of the Monument?

• Are there any recommendations for changes in the authorizing legislation for Pinnacles National Monument that should be considered in the GMP?

*Comments:* Through the outreach activities planned in this final scoping effort, the NPS welcomes additional information and suggestions from the public regarding resource protection, visitor use, and land management. This notice formally resumes the public scoping comment phase for the EIS process for the GMP. All interested persons, organizations, agencies, and American Indian tribes wishing to express new concerns or provide information about management issues which should be addressed in the GMP and environmental impact analysis process are encouraged to contact the Superintendent (previous responses are contained in the administrative record and do not need to be resubmitted). All comments received will become part of the public record. 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.

At this time, public scoping meetings are anticipated to be held during the spring of 2007; details will be announced widely in local and regional news media, via direct park mailings and through the GMP Web site: (*http://parkplanning.nps.gov/pinn*). All attendees will be given the opportunity to ask questions and provide comments to the planning team. The Web site will provide the most up-to-date information regarding the project, including project description, planning process updates, meeting notices, reports and documents, and useful links associated with the project.

All written comments regarding the preparation of the EIS/GMP must be postmarked or transmitted not later than May 31, 2007 and should be submitted directly to General Management Plan Team, Pinnacles National Monument, 5000 Hwy 146, Paicines, CA 95043 (or electronically through the Web site noted above).

*Decision Process:* At this time, the draft EIS/GMP is expected to be released for public review during the fall of 2008; following due consideration of all comments as may be submitted, the final document is anticipated to be completed in the summer of 2009. Formal announcement of the availability of both documents will be published in the **Federal Register**, publicized via local and regional media and the internet, and via direct mailing to the project mailing list. Responsibility for approving the Final EIS/GMP is delegated to the NPS, and the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementing the approved GMP is the Superintendent, Pinnacles National Monument.

Dated: January 26, 2007.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. E7–6447 Filed 4–5–07; 8:45 am]

BILLING CODE 4312–EP–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 24, 2007. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 23, 2007.

**J. Paul Loether,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

**COLORADO**

**Conejos County**

Denver & Rio Grande Railroad San Juan Extension (Boundary Increase), Railway corridor from Antonito, CO to Chama, NM via Cubres Pass, Antonito, 07000374

**GEORGIA**

**Carroll County**

Carrollton Downtown Historic District, Roughly around downtown sq. and is bounded by Johnson Ave., White St., Mill St. and Barnes St., Carrollton, 07000378

**Lowndes County**

Southside Historic District, Roughly bounded by CSX trks, Bunche Dr., Griffin Ave., Old Statenville Rd., Wisenbake Ln., Dasher Ln., and S. Patterson Rd., Valdosta, 07000379

**Thomas County**

Boston Historic District, Roughly bounded by U.S. 84, Roundtree and S. Oak St., Washington St. and W. Jefferson and W. Railroad Sts., Boston, 07000375

**MARYLAND**

**Wicomico County**

Union Station, WI–150, 611 Railroad Ave., Salisbury, 07000389

**MICHIGAN**

**Berrien County**

Robbins, Wendell P. and Harriet Rounds, House, 680 Pipestone St., Benton Harbor, 07000385

**Kalamazoo County**

Fanckboner—Nichols Farmstead, 5992 West VW Ave., Prairie Ronde Township, 07000387

**Lenawee County**

Davenport Hotel, 1280 US–12, Franklin Township, 07000383

Irish Hills Towers, 8433 W US–12, Cambridge Township, 07000380

Saint Joseph Church and Shrine, 8742 US–12, Cambridge Township, 07000382

Walker's, S., Hotel, 11705 US–12, Cambridge Township, 07000381

**Marquette County**

Cleveland Mine Engine House Number 3, 601 Division St., Ishpeming, 07000386

**MISSOURI**

**Cass County**

Watkins Family Farm Historic District, 19116 S. School Rd., Raymore, 07000376

**St. Louis Independent City**

Wellston Station, 6111 Dr. Martin Luther King Dr., St. Louis (Independent City), 07000377

**NEW MEXICO**

**Bernalillo County**

ATSF Locomotive No. 2926, 1600 Twelfth St. NW., Albuquerque, 07000388

**SOUTH CAROLINA**

**Oconee County**

McPhail Angus Farm, 320 Coyote Ln., Seneca, 07000396

**VERMONT**

**Windham County**

Bellows Falls Neighborhood Historic District (Boundary Increase), Center St., Front St., Old Terrace St., Pine St., Rockingham, 07000403

**VIRGINIA**

**Accomack County**

Willowdale, 18412 Willowdale Dr., Painter, 07000401

**Amherst County**

Speed the Plough, 389 Fair Lea Ln., Monroe, 07000391

**Bedford County**

Olive Branch Missionary Baptist Church, 5982 Joppa Mill Rd., Moneta, 07000392

**Halifax County**

DeJarnette's Tavern, 4080 Stagecoach Rd., Nathalie, 07000398

Staunton River State Park Historic District, 1170 Staunton Trail, Scottsburg, 07000402

**Lee County**

Keokee Store No. 1, Cty Rd. 606, Keokee, 07000397

**Martinsville Independent City**

Fayette Street Historic District, Fayette St. and Side Sts. roughly bounded by Market, W. Church, Memorial and Swanson Sts., Martinsville (Independent City), 07000395

**Norfolk Independent City**

West Point Cemetery, 238 E. Princess Anne Rd., Norfolk (Indpendent City), 07000393

**Richmond Independent City**

Chamberlayne Gardens, (Federal Housing Administration-Insured Garden Apartments in Richmond, Virginia MPS), 4301–4313 and 4315–4327 Chamberlayne Ave. and 4800–4818 Old Brook Rd., Richmond (Independent City), 07000390

St. Catherine's School, 6001 Grove Ave., Richmond (Independent City), 07000400

**Rockingham County**

Bon Air, 2477 Bear Lithia Rd., Elkton, 07000399

**Tazewell County**

Richlands Historic District, Includes portions of Front, Second, Third, Fourth Sts., and Grayson Ave., Lee St., Washington Sq. and Suffolk Ave., Richlands, 07000394

**WISCONSIN**

**Marinette County**

Peshtigo Reef Light, (Light Stations of the United States MPS), Offshore in lower Green Bay, approx. 3.3 mi. SE. of Peshtigo Point, Peshtigo Township, 07000404

To assist in the preservation of historic properties the comment period has been shortened to four (4) days.

**NEW YORK**

**Ontario County**

Farmington Quaker Crossroads Historic District, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS), Cty Rd. 8 at Sheldon Rd., Farmington, 07000384

[FR Doc. E7–6501 Filed 4–5–07; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of March 19 through March 23, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–61,019; Robert Bosch Corp., Greensville, NC: February 12, 2006.*

*TA–W–61,021; Crookhorn Davis, Inc., Shelton, CT: February 23, 2006.*

*TA–W–61,026; Scot Young Research, dba Enterprise Mfg., Inc., Messanie St. All Source, Ameristaff, St. Joseph, MO: February 23, 2006.*

*TA–W–61,030; Prospect Mold, Inc., Cuyahoga Falls, OH: February 23, 2006.*

*TA–W–61,073; Bassett Furniture Industries, Inc., including Ameristaff, Bassett, VA: March 6, 2006.*

*TA–W–61,103; Delbar Products, Inc, Perkasie, PA: March 12, 2006.*

*TA—60,550; V.H. Furniture, Also Know As Virginia House, Subsidiary of Vaughan Bassett Furniture, Atkins, VA: December 6, 2005.*

*TA—60,887; Clayton Marcus Company—Plant #1—Bethlehem, Hickory, NC: April 22, 2006.*

*TA—60,924; Martco Limited Partnership, OSB Lemoyen Div., Rapides Sheriffs Office,& Avayelles, LeMoyen, LA: February 5, 2006.*

*TA—61,047; David Crowder Design Inc., Working on Site at Joan Fabrics Corp., Hickory, NC: February 28, 2006.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA—60,912; Quebecor World Lincoln, Quebecor World, Including Oasis Staffing, Lincoln, NE: February 2, 2006.*

*TA—60,919; Eaton Corporation, Leased Workers of Hunter Staffing, Mantua, OH: February 7, 2006.*

*TA—60,919A; Eaton Corporation, Assembly Department, Leased Workers of Ryan Staffing, Aurora, OH: February 7, 2006.*

*TA–W–60,960; Flynn Enterprises, LLC, Skyline Division, Hopkinsville, KY: February 9, 2006.*

*TA–W–60,960A; Flynn Enterprises, LLC, Harrison Division, Hopkinsville, KY: February 9, 2006.*

*TA–W–60,966; Vishay Intertechnology, Vitramon Division, Monroe, CT: February 15, 2006.*

*TA–W–61,013; Elder Manufacturing Company Inc., Dexter, MO: September 14, 2006.*

*TA–W–61,046; Schiffer Dental Care Products, Agawam, MA: March 1, 2006.*

*TA–W–61,082; Technicolor Home Entertainment Services, Camarillo, CA: February 22, 2006.*

*TA—60,831; Kroehler Furniture Manufacturing Co. Inc., Sewing Department, Conover, NC: January 24, 2006.*

*TA–W–61,014; Burma Bibas, Inc., Long Island City, NY: January 23, 2006.*

*TA–W–61,050; Cartamundi, Inc., Kingsport, TN: February 28, 2006.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–60,796; Parkdale Mills, Inc., Plant #40, Graniteville, SC: January 17, 2006.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

*None.*

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*None.*

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*TA–W–60,904; Reed Manufacturing Company, Inc., Tupelo, MS.*

*TA–W–60,919B; Eaton Corporation, Extrusion Department, Leased Workers of Ryan Staffing, Aurora, OH.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–61,026A; Scot Young Research, dba Enterprise Mfg., Inc., Locust Street, St. Joseph, MO.*

*TA–W–61,051; Continental Teves, Inc., Automotive Systems, Morganton, NC.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–60,721; Future Tool and Die, Inc., Grandville, MI.*

*TA–W–60,787; Ravenswood Specialty Services, Inc., Ravenswood, WV.*

*TA–W–61,036; Jones Apparel Group, Inc., Internal Production Department, Bristol, PA.*

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

*None.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–60,897; Combined Insurance Company of America, Information Technology Division, Chicago, IL.*

*TA–W–60,926; Verizon Business, Inc., A Subsidiary of Verizon Communication, Cedar Rapids, IA.*

*TA–W–60,929; Compuspar USA, Inc., Allentown, PA.*

*TA–W–61,035; Santa's Best, Manitowoc, WI.*

*TA–W–61,077; Adidas International, Inc., Greensboro, NC.*

*TA–W–61,079; Western Union, LLC, Englewood, CO.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of March 19 through March 23, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 2, 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–6430 Filed 4–5–07; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,996; TA–W–60,996A; TA–W–60,996B]**

### Yamaha Music Manufacturing Inc., Thomaston, GA; Yamaha Musical Products Inc., Grand Rapids, MI; Yamaha Corporation of America, Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 20, 2007 in response to a petition filed by a company official on behalf of workers at Yamaha Music Manufacturing Inc., Thomaston, Georgia (TA–W–60,996), Yamaha Musical Products Inc., Grand Rapids, Michigan (TA–W–60,996A), and Yamaha Corporation of America, Grand Rapids, Michigan (TA–W–60,996B).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March, 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–6431 Filed 4–5–07; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Program Year (PY) 2007 Workforce Investment Act (WIA Allotments and Additional Funds From WIA Section 173(e) for Adult/Dislocated Worker Activities for Eligible States; PY 2007 Wagner-Peyser Act Final Allotments; and FY 2007 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Allotments

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This Notice announces states' allotments for PY 2007 (July 1, 2007–June 30, 2008) for WIA Title I Youth, Adults and Dislocated Worker Activities programs; additional PY 2007 funding from WIA Section 173(e) for eligible states; final allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2007; and Work Opportunity Tax Credit and Welfare-to-Work Tax Credit program allotments for FY 2007.

The WIA allotments for states and the final allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas (American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Virgin Islands) was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, **Federal Register** Notice. The formula for PY 2007 is the same as used for PY 2000 and is described in the section on Youth Activities program allotments. Comments are invited on the formula used to allot funds to the outlying areas.

**DATES:** Comments on the formula used to allot funds to the outlying areas must be received by May 7, 2007.

**ADDRESSES:** Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Avenue, NW., Room N–4702, Washington, DC 20210, Attention: Ms. Sherryl Bailey, 202–693–2813 (phone), 202–693–2859 (fax), e-mail: *bailey.sherryl@dol.gov*.

**FOR FURTHER INFORMATION CONTACT:** WIA Youth Activities allotments: Haskel Lowery at 202–693–3608 or LaSharn Youngblood at 202–693–3606; WIA Adult and Dislocated Worker Activities and ES final allotments: Mike Qualter at 202–693–3014.

**SUPPLEMENTARY INFORMATION:** The Department of Labor (DOL or Department) is announcing WIA allotments for PY 2007 (July 1, 2007–June 30, 2008) for Youth Activities, Adults and Dislocated Worker Activities, and Wagner-Peyser Act PY 2007 final allotments. This document provides information on the amount of funds available during PY 2007 to states with an approved WIA Title I and Wagner-Peyser Act Strategic Plan for PY 2007, and information regarding allotments to the outlying areas. The allotments are based on the funds appropriated in the FY 2007 Continuing Appropriations Resolution, Public Law 110–5, February 15, 2007. Attached are tables listing the PY 2007 allotments for programs under WIA Title I Youth Activities (Attachment I), Adult and Dislocated Workers Employment and Training Activities (Attachments II and III, respectively), additional assistance under Section 173(e) (Attachment IV),

and the PY 2007 Wagner-Peyser Act final allotments (Attachment V). Also attached are tables FY 2007 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit allotments (Attachment VI).

*Youth Activities Allotments.* PY 2007 Youth Activities funds under WIA total $940,500,000. Attachment I includes a breakdown of the Youth Activities program allotments for PY 2007 and provides a comparison of these allotments to PY 2006 Youth Activities allotments for all states, outlying areas, Puerto Rico and the District of Columbia. Before determining the amount available for states, the total funding available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities. On December 17, 2003, the President signed Public Law 108–188, the *Compact of Free Association Amendments Act of 2003*, which provides for consolidation of all funding, including WIA Title I, for the Marshall Islands and Micronesia into supplemental funding grants in the Department of Education. The Education appropriation for FY 2007 includes funding for these supplemental grants; therefore, WIA Title I funds are no longer being provided for these two areas. The Compact continues the availability of programs previously available to Palau through September 30, 2007, including WIA Title I funding provisions. The methodology for distributing funds to all outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as used since PY 2000, i.e., funds are distributed among the remaining areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain of the prior year share. As in PY 2006, data for the relative share calculation in the PY 2007 formula were from 2000 Census data for all outlying areas, obtained from the Bureau of the Census (Bureau) and based on 2000 Census surveys for those areas conducted either by the Bureau or the outlying areas under the guidance of the Bureau. The total amount available for Native Americans is 1.5 percent of the total amount for Youth Activities, in accordance with WIA section 127. After determining the amount for the outlying areas and Native Americans, the amount available for allotment to the states for PY 2007 is $924,041,250. This total amount was below the required $1 billion threshold specified in section 127(b)(1)(C)(iv)(IV); therefore, as in PY 2006, the WIA additional minimum provisions were not applied, and, instead, as required by WIA, the Job Training Partnership Act (JTPA) section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor were used. Also, as required by WIA, the provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors required in WIA use the following data for the PY 2007 allotments:

(1) Number of unemployed for Areas of Substantial Unemployment (ASU's), averages for the 12-month period, July 2005 through June 2006;

(2) Number of excess unemployed individuals or the ASU excess (depending on which is higher), averages for the same 12-month period used for ASU unemployed data; and

(3) Number of economically disadvantaged youth (age 16 to 21, excluding college students and military), from the 2000 Census.

The ASU data for the PY 2007 allotments was identified by the states under Employment and Training Administration guidance for PY 2007 which required states to use special 2000 Census data based on households, obtained under contract with the Census Bureau and provided to states by the Bureau of Labor Statistics. These special 2000 Census data were used to avoid the 2000 Census data processing problem related to group quarters data identified last year, and it replaced the 1990 Census data used by states for identifying ASUs for PY 2006 allotments.

**Adult Employment and Training Activities Allotments**

The total Adult Employment and Training Activities appropriation is $864,199,000. Attachment II shows the PY 2007 Adult Employment and Training Activities allotments and comparison to PY 2006 allotments by state. Like the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adult Activities. As discussed in the Youth Activities paragraph, beginning in PY 2005, WIA funding for the Marshall Islands and Micronesia is no longer provided; instead, funding is provided in the Department of Education's appropriation. The Adult Activities funds for grants to the remaining outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for Youth Activities. After determining the amount for the outlying areas, the amount available for allotments to the states is $862,038,502. Like the Youth Activities program, the WIA minimum provisions were not applied for the PY 2007 allotments because the total amount available for the states was below the $960 million threshold required for Adult Activities in section 132(b)(1)(B)(iv)(IV). Instead, as required by WIA, the minimum allotments were calculated using the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor. Also, like the Youth Activities program, a provision applying a 130 percent stop-gain of the prior year allotment percentage was used. The three formula factors use the same data as used for the PY 2007 Youth Activities formula, except that data from the 2000 Census for the number of economically disadvantaged adults (age 22 to 72, excluding college students and military) were used.

**Dislocated Worker Employment and Training Activities Allotments**

The total Dislocated Worker appropriation is $1,471,903,000. The total appropriation includes formula funds for the states, while the National Reserve is used for National Emergency Grants, technical assistance and training, demonstration projects (including Community-Based Job Training Grants), the outlying areas' Dislocated Worker allotments, and additional assistance to eligible states. Attachment III shows the PY 2007 Dislocated Worker Activities fund allotments by state. Like the Youth and Adult Activities programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker Activities. WIA funding for the Marshall Islands and Micronesia is no longer provided, as discussed above. The Dislocated Worker Activities funds for grants to outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the remaining areas by the same pro rata share as the areas received for the PY 2007 WIA Adult Activities program, the same methodology used in PY 2006. For the state distribution of formula funds, the three formula factors required in WIA use the following data for the PY 2007 allotments:

(1) Number of unemployed, averages for the 12-month period, October 2005 through September 2006;

(2) Number of excess unemployed, averages for the 12-month period, October 2005 through September 2006; and

(3) Number of long-term unemployed, averages for calendar year 2005.

Since the Dislocated Worker Activities formula has no floor amount or hold-harmless provisions, funding changes for states directly reflect the impact of changes in the number of unemployed.

**Additional Funding From WIA Section 173(e) for Adult /Dislocated Worker Activities for Eligible States**

WIA Section 173(e) provides that up to $15 million from Dislocated Workers reserve funds is to be made available annually to certain states that receive less funds under the WIA Adult Activities formula than they would have received had the JTPA Title II–A Adult program formula been in effect. The amount of the grants is based on the difference between the WIA and JTPA formula allotments; funds are available for grants for up to eight states with the largest difference. The additional funding must be used for Adult or Dislocated Worker Activities. In PY 2007, five states are eligible for these additional funds, for a total of $5,438,783 (Attachment IV).

**Wagner-Peyser Act Final Allotments**

The appropriated level for PY 2007 for ES grants totals $715,883,000. After reserving $18 million for the postage reserve and determining the funding for outlying areas, allotments to states were calculated using the formula set forth at section 6 of the Wagner-Peyser Act (29 U.S.C. 49e). PY 2007 formula allotments were based on each state's share of calendar year 2006 monthly averages of the civilian labor force (CLF) and unemployment. The Secretary of Labor is required to set aside up to three percent of the total available funds to assure that each state will have sufficient resources to maintain statewide employment service activities, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, the three percent set-aside funds are included in the total allotment. The set-aside funds were distributed in two steps to states that have lost in relative share of resources from the previous year. In Step 1, states that have a CLF below one million and are also below the median CLF density were maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds were distributed on a pro-rata basis in Step 2 to all other states losing in relative share from the prior year but not meeting the size and density criteria for Step 1. The distribution of Wagner-Peyser funds (Attachment V) includes $696,181,664 for states, as well as $1,701,196 for outlying areas, and a postage reserve of $3,347,139.

Traditionally, a portion of Wagner-Peyser formula funds have been set aside in a reserve to centrally pay for states' postage costs associated with the conduct of labor exchange services. Beginning October 1, 2007 (FY 2008), all states and outlying areas will be required to pay their own postage costs with their formula grants, and there will no longer be any postage amounts reserved from the formula funds. States were given the option to implement the postage conversion earlier than October 1, 2007, at the beginning of any quarter in FY 2007. In addition to the formula funds, PY 2007 allotments will include postage funds applicable to the period of postage conversion implementation during PY 2007 as described below.

The total amount of PY 2007 postage funds for ES activities is $18,000,000. Seventy-five percent of this amount will be distributed to all states and outlying areas based on their pro rata share of the PY 2007 formula funds to cover postage conversion implementation which begins October 1, 2007 (last three quarters of PY 2007). In addition, the early implementer states will be given their pro rata share of the postage reserves left to cover the first quarter of PY 2007, thus giving them a full year of postage funds. Next year, for PY 2008, there will be no postage reserve taken from funds distributed by formula; all funds will be distributed by formula and states and outlying areas will use their formula grants to cover all postage costs.

Under section 7 of the Wagner-Peyser Act, 10 percent of the total sums allotted to each state shall be reserved for use by the Governor to provide performance incentives for ES offices, services for groups with special needs, and for the extra costs of exemplary models for delivering job services.

**Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Programs: Grants to States**

Total funding for FY 2007 is $17,677,000. After reserving funds for postage and $20,000 for the Virgin Islands, funds were distributed to states by administrative formula with a $64,000 minimum allotment and a 95 percent stop-loss/130 percent stop-gain from the prior year allotment share percentage. The allotment formula data factors and related percentages used are as follows:

(1) 50 percent based on each state's relative share of total FY 2005 certifications issued for the WOTC/WtW Tax Credit programs;

(2) 30 percent based on each state's relative share of the CLF for twelve months ending September 2006; and

(3) 20 percent based on each state's relative share of the adult recipients of Temporary Assistance for Needy Families (TANF) for FY 2005.

The final distribution of WOTC funding includes $17,144,367 for states, $20,000 for the Virgin Islands, and a postage reserve of $512,633. The total allotment distribution by state is displayed in Attachment VI.

As in the Wagner-Peyser program, the full year amount of postage funds will not be held in reserve. However, since this program's funds are fiscal year funds and FY 2007 is the transition period for states which opted to implement postage conversion earlier than FY 2008, only the early implementer states will receive additional postage funds in their FY 2007 grant. The additional postage amount for these states will be based on their FY 2007 formula pro rata share of the postage reserve amount based on their quarter of implementation. In FY 2008, there will be no postage reserve taken from funds distributed by formula; all funds will be distributed by formula and states will use their formula grants to cover all postage costs.

Signed at Washington, DC, on this 3rd day of April, 2007.

**Emily Stover DeRocco,**

*Assistant Secretary for Employment and Training.*

Attachment I

U.S. Department of Labor
Employment and Training Administration
WIA Youth Activities State Allotments
Comparison of PY 2007 vs PY 2006 (Revised ASUs)

| State | PY 2006 Using Revised ASUs | PY 2007 | Difference | % Difference |
|---|---|---|---|---|
| Total | $940,500,000 | $940,500,000 | $0 | 0.00% |
| Alabama | 12,648,643 | 11,383,779 | (1,264,864) | -10.00% |
| Alaska | 3,080,409 | 3,397,074 | 316,665 | 10.28% |
| Arizona | 14,717,635 | 16,928,408 | 2,210,773 | 15.02% |
| Arkansas | 8,823,726 | 8,704,080 | (119,646) | -1.36% |
| California | 128,512,805 | 123,174,266 | (5,338,539) | -4.15% |
| Colorado | 11,952,681 | 11,606,195 | (346,486) | -2.90% |
| Connecticut | 7,505,056 | 7,654,637 | 149,581 | 1.99% |
| Delaware | 2,310,103 | 2,310,103 | 0 | 0.00% |
| District of Columbia | 3,986,019 | 3,587,417 | (398,602) | -10.00% |
| Florida | 32,232,987 | 29,009,688 | (3,223,299) | -10.00% |
| Georgia | 17,503,930 | 22,755,109 | 5,251,179 | 30.00% |
| Hawaii | 3,020,792 | 2,718,713 | (302,079) | -10.00% |
| Idaho | 2,878,030 | 2,590,227 | (287,803) | -10.00% |
| Illinois | 46,261,454 | 46,092,387 | (169,067) | -0.37% |
| Indiana | 18,769,283 | 21,588,482 | 2,819,199 | 15.02% |
| Iowa | 5,141,305 | 4,627,175 | (514,130) | -10.00% |
| Kansas | 7,677,603 | 6,909,843 | (767,760) | -10.00% |
| Kentucky | 11,653,493 | 15,149,541 | 3,496,048 | 30.00% |
| Louisiana | 15,045,629 | 19,559,318 | 4,513,689 | 30.00% |
| Maine | 2,856,169 | 3,195,344 | 339,175 | 11.88% |
| Maryland | 9,543,451 | 9,122,752 | (420,699) | -4.41% |
| Massachusetts | 15,842,725 | 17,850,460 | 2,007,735 | 12.67% |
| Michigan | 46,903,258 | 46,701,312 | (201,946) | -0.43% |
| Minnesota | 9,555,360 | 8,599,824 | (955,536) | -10.00% |
| Mississippi | 13,515,405 | 17,570,027 | 4,054,622 | 30.00% |
| Missouri | 20,650,995 | 18,585,896 | (2,065,099) | -10.00% |
| Montana | 2,497,394 | 2,310,103 | (187,291) | -7.50% |
| Nebraska | 2,715,766 | 2,877,968 | 162,202 | 5.97% |
| Nevada | 3,940,227 | 3,546,204 | (394,023) | -10.00% |
| New Hampshire | 2,310,103 | 2,310,103 | 0 | 0.00% |
| New Jersey | 19,806,031 | 17,825,428 | (1,980,603) | -10.00% |
| New Mexico | 6,677,543 | 6,094,542 | (583,001) | -8.73% |
| New York | 63,707,670 | 61,807,331 | (1,900,339) | -2.98% |
| North Carolina | 23,951,523 | 21,556,371 | (2,395,152) | -10.00% |
| North Dakota | 2,310,103 | 2,310,103 | 0 | 0.00% |
| Ohio | 44,984,082 | 43,472,973 | (1,511,109) | -3.36% |
| Oklahoma | 9,005,339 | 8,104,805 | (900,534) | -10.00% |
| Oregon | 16,115,438 | 14,503,894 | (1,611,544) | -10.00% |
| Pennsylvania | 38,001,974 | 35,296,474 | (2,705,500) | -7.12% |
| Puerto Rico | 30,129,697 | 35,817,722 | 5,688,025 | 18.88% |
| Rhode Island | 2,740,091 | 3,531,877 | 791,786 | 28.90% |
| South Carolina | 18,383,325 | 20,827,321 | 2,443,996 | 13.29% |
| South Dakota | 2,310,103 | 2,310,103 | 0 | 0.00% |
| Tennessee | 19,927,151 | 21,188,759 | 1,261,608 | 6.33% |
| Texas | 81,063,738 | 80,144,725 | (919,013) | -1.13% |
| Utah | 5,502,739 | 4,952,465 | (550,274) | -10.00% |
| Vermont | 2,310,103 | 2,310,103 | 0 | 0.00% |
| Virginia | 11,150,728 | 10,603,936 | (546,792) | -4.90% |
| Washington | 21,749,034 | 20,588,711 | (1,160,323) | -5.34% |
| West Virginia | 5,802,642 | 5,222,378 | (580,264) | -10.00% |
| Wisconsin | 12,049,657 | 10,844,691 | (1,204,966) | -10.00% |
| Wyoming | 2,310,103 | 2,310,103 | 0 | 0.00% |
| State Total | 924,041,250 | 924,041,250 | 0 | 0.00% |
| American Samoa | 133,535 | 134,122 | 587 | 0.44% |
| Guam | 1,086,941 | 1,091,714 | 4,773 | 0.44% |
| Northern Marianas | 402,222 | 403,989 | 1,767 | 0.44% |
| Palau | 85,480 | 76,932 | (8,548) | -10.00% |
| Virgin Islands | 643,072 | 644,493 | 1,421 | 0.22% |
| Outlying Areas Total | 2,351,250 | 2,351,250 | 0 | 0.00% |
| Native Americans | 14,107,500 | 14,107,500 | 0 | 0.00% |

Attachment II

U.S. Department of Labor
Employment and Training Administration
WIA Adult Activities State Allotments
Comparison of PY 2007 vs PY 2006 (Revised ASUs)

| State | PY 2006 Using Revised ASUs | PY 2007 | Difference | % Difference |
|---|---|---|---|---|
| **Total** | **$864,198,640** | **$864,199,000** | **$360** | **0.00%** |
| Alabama | 12,221,062 | 10,998,960 | (1,222,102) | -10.00% |
| Alaska | 2,901,894 | 3,192,692 | 290,798 | 10.02% |
| Arizona | 13,871,822 | 15,909,885 | 2,038,063 | 14.69% |
| Arkansas | 8,175,229 | 8,052,417 | (122,812) | -1.50% |
| California | 122,361,159 | 117,265,072 | (5,096,087) | -4.16% |
| Colorado | 10,569,061 | 10,329,354 | (239,707) | -2.27% |
| Connecticut | 6,540,249 | 6,658,773 | 118,524 | 1.81% |
| Delaware | 2,155,095 | 2,155,096 | 1 | 0.00% |
| District of Columbia | 3,380,681 | 3,042,614 | (338,067) | -10.00% |
| Florida | 32,244,452 | 29,020,019 | (3,224,433) | -10.00% |
| Georgia | 16,152,634 | 20,998,433 | 4,845,799 | 30.00% |
| Hawaii | 2,924,759 | 2,632,284 | (292,475) | -10.00% |
| Idaho | 2,449,853 | 2,204,869 | (244,984) | -10.00% |
| Illinois | 42,381,292 | 42,158,210 | (223,082) | -0.53% |
| Indiana | 16,321,034 | 18,905,421 | 2,584,387 | 15.83% |
| Iowa | 3,723,619 | 3,351,258 | (372,361) | -10.00% |
| Kansas | 6,471,301 | 5,824,173 | (647,128) | -10.00% |
| Kentucky | 12,231,227 | 15,900,602 | 3,669,375 | 30.00% |
| Louisiana | 14,429,905 | 18,758,884 | 4,328,979 | 30.00% |
| Maine | 2,684,224 | 2,971,851 | 287,627 | 10.72% |
| Maryland | 8,920,528 | 8,517,777 | (402,751) | -4.51% |
| Massachusetts | 13,376,646 | 15,799,210 | 2,422,564 | 18.11% |
| Michigan | 43,194,015 | 42,941,848 | (252,167) | -0.58% |
| Minnesota | 8,068,212 | 7,261,394 | (806,818) | -10.00% |
| Mississippi | 12,419,490 | 16,145,344 | 3,725,854 | 30.00% |
| Missouri | 18,858,794 | 16,972,922 | (1,885,872) | -10.00% |
| Montana | 2,397,365 | 2,157,629 | (239,736) | -10.00% |
| Nebraska | 2,155,095 | 2,155,096 | 1 | 0.00% |
| Nevada | 3,893,660 | 3,504,295 | (389,365) | -10.00% |
| New Hampshire | 2,155,095 | 2,155,096 | 1 | 0.00% |
| New Jersey | 19,595,228 | 17,635,713 | (1,959,515) | -10.00% |
| New Mexico | 6,282,504 | 5,732,846 | (549,658) | -8.75% |
| New York | 61,760,097 | 59,939,067 | (1,821,030) | -2.95% |
| North Carolina | 22,061,806 | 19,855,634 | (2,206,172) | -10.00% |
| North Dakota | 2,155,095 | 2,155,096 | 1 | 0.00% |
| Ohio | 41,263,454 | 39,795,327 | (1,468,127) | -3.56% |
| Oklahoma | 8,411,670 | 7,570,506 | (841,164) | -10.00% |
| Oregon | 14,938,027 | 13,444,230 | (1,493,797) | -10.00% |
| Pennsylvania | 34,392,337 | 31,818,930 | (2,573,407) | -7.48% |
| Puerto Rico | 31,646,945 | 36,996,888 | 5,349,943 | 16.91% |
| Rhode Island | 2,232,342 | 2,902,046 | 669,704 | 30.00% |
| South Carolina | 17,085,257 | 19,333,335 | 2,248,078 | 13.16% |
| South Dakota | 2,155,095 | 2,155,096 | 1 | 0.00% |
| Tennessee | 19,022,532 | 20,174,949 | 1,152,417 | 6.06% |
| Texas | 74,988,040 | 74,025,981 | (962,059) | -1.28% |
| Utah | 4,306,337 | 3,875,705 | (430,632) | -10.00% |
| Vermont | 2,155,095 | 2,155,096 | 1 | 0.00% |
| Virginia | 10,092,097 | 9,440,102 | (651,995) | -6.46% |
| Washington | 19,945,283 | 18,747,455 | (1,197,828) | -6.01% |
| West Virginia | 5,671,674 | 5,104,509 | (567,165) | -10.00% |
| Wisconsin | 10,092,681 | 9,083,417 | (1,009,264) | -10.00% |
| Wyoming | 2,155,095 | 2,155,096 | 1 | 0.00% |
| **State Total** | **862,038,143** | **862,038,502** | **359** | **0.00%** |
| American Samoa | 113,735 | 120,141 | 6,406 | 5.63% |
| Guam | 925,771 | 977,912 | 52,141 | 5.63% |
| Northern Marianas | 342,582 | 361,876 | 19,294 | 5.63% |
| Palau | 89,665 | 80,699 | (8,966) | -10.00% |
| Virgin Islands | 688,744 | 619,870 | (68,874) | -10.00% |
| **Outlying Areas Total** | **2,160,497** | **2,160,498** | **1** | **0.00%** |

Attachment III

U.S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities State Allotments
Comparison of PY 2007 vs PY 2006

| State | PY 2006 | PY 2007 | Difference | % Difference |
|---|---|---|---|---|
| **Total** | **$1,471,903,360** | **$1,471,903,000** | **($360)** | **0.00%** |
| Alabama | 13,331,553 | 9,667,167 | (3,664,386) | -27.49% |
| Alaska | 4,597,753 | 6,144,878 | 1,547,125 | 33.65% |
| Arizona | 13,747,699 | 13,214,552 | (533,147) | -3.88% |
| Arkansas | 9,887,425 | 9,506,720 | (380,705) | -3.85% |
| California | 162,375,543 | 137,599,381 | (24,776,162) | -15.26% |
| Colorado | 17,871,983 | 12,617,088 | (5,254,895) | -29.40% |
| Connecticut | 11,850,543 | 9,557,542 | (2,293,001) | -19.35% |
| Delaware | 1,654,547 | 1,844,166 | 189,619 | 11.46% |
| District of Columbia | 5,371,044 | 3,765,797 | (1,605,247) | -29.89% |
| Florida | 35,931,495 | 30,122,121 | (5,809,374) | -16.17% |
| Georgia | 29,404,826 | 32,806,361 | 3,401,535 | 11.57% |
| Hawaii | 1,669,881 | 1,862,867 | 192,986 | 11.56% |
| Idaho | 2,648,810 | 2,295,799 | (353,011) | -13.33% |
| Illinois | 68,530,595 | 55,615,362 | (12,915,233) | -18.85% |
| Indiana | 24,288,613 | 28,801,743 | 4,513,130 | 18.58% |
| Iowa | 8,143,832 | 7,320,601 | (823,231) | -10.11% |
| Kansas | 11,122,106 | 8,595,338 | (2,526,768) | -22.72% |
| Kentucky | 14,247,753 | 27,848,252 | 13,600,499 | 95.46% |
| Louisiana | 22,270,187 | 23,030,769 | 760,582 | 3.42% |
| Maine | 3,678,276 | 3,832,647 | 154,371 | 4.20% |
| Maryland | 11,485,963 | 13,128,142 | 1,642,179 | 14.30% |
| Massachusetts | 18,694,232 | 24,586,208 | 5,891,976 | 31.52% |
| Michigan | 78,072,257 | 92,175,141 | 14,102,884 | 18.06% |
| Minnesota | 12,163,257 | 11,554,155 | (609,102) | -5.01% |
| Mississippi | 20,237,178 | 34,195,096 | 13,957,918 | 68.97% |
| Missouri | 27,603,673 | 21,703,545 | (5,900,128) | -21.37% |
| Montana | 2,119,723 | 1,899,780 | (219,943) | -10.38% |
| Nebraska | 3,341,532 | 3,745,394 | 403,862 | 12.09% |
| Nevada | 4,373,088 | 4,517,176 | 144,088 | 3.29% |
| New Hampshire | 2,331,231 | 2,423,761 | 92,530 | 3.97% |
| New Jersey | 20,080,014 | 30,581,293 | 10,501,279 | 52.30% |
| New Mexico | 8,090,966 | 4,867,531 | (3,223,435) | -39.84% |
| New York | 71,965,542 | 69,029,652 | (2,935,890) | -4.08% |
| North Carolina | 33,446,393 | 27,371,840 | (6,074,553) | -18.16% |
| North Dakota | 995,319 | 1,103,560 | 108,241 | 10.88% |
| Ohio | 65,100,062 | 63,889,244 | (1,210,818) | -1.86% |
| Oklahoma | 7,617,556 | 7,417,426 | (200,130) | -2.63% |
| Oregon | 25,626,060 | 21,227,957 | (4,398,103) | -17.16% |
| Pennsylvania | 46,129,639 | 37,911,971 | (8,217,668) | -17.81% |
| Puerto Rico | 37,710,686 | 56,550,493 | 18,839,807 | 49.96% |
| Rhode Island | 3,413,306 | 5,127,112 | 1,713,806 | 50.21% |
| South Carolina | 28,062,297 | 37,727,604 | 9,665,307 | 34.44% |
| South Dakota | 1,192,398 | 1,530,445 | 338,047 | 28.35% |
| Tennessee | 25,956,878 | 29,057,175 | 3,100,297 | 11.94% |
| Texas | 96,371,584 | 93,892,221 | (2,479,363) | -2.57% |
| Utah | 6,463,425 | 3,997,059 | (2,466,366) | -38.16% |
| Vermont | 993,509 | 1,131,476 | 137,967 | 13.89% |
| Virginia | 13,571,565 | 11,650,794 | (1,920,771) | -14.15% |
| Washington | 30,946,550 | 26,671,477 | (4,275,073) | -13.81% |
| West Virginia | 5,514,593 | 5,116,518 | (398,075) | -7.22% |
| Wisconsin | 16,723,298 | 17,158,512 | 435,214 | 2.60% |
| Wyoming | 793,122 | 822,091 | 28,969 | 3.65% |
| **State Total** | **1,189,811,360** | **1,189,811,000** | **(360)** | **0.00%** |
| American Samoa | 193,712 | 204,623 | 10,911 | 5.63% |
| Guam | 1,576,774 | 1,665,579 | 88,805 | 5.63% |
| Northern Marianas | 583,486 | 616,347 | 32,861 | 5.63% |
| Palau | 152,717 | 137,447 | (15,270) | -10.00% |
| Virgin Islands | 1,173,069 | 1,055,762 | (117,307) | -10.00% |
| **Outlying Areas Total** | **3,679,758** | **3,679,758** | **0** | **0.00%** |
| **National Reserve** | **278,412,242** | **278,412,242** | **0** | **0.00%** |

Attachment IV

U.S. Department of Labor
Employment and Training Administration

**Additional PY 2006 Funding from Dislocated Worker National Emergency Reserve for Adult/Dislocated Worker Activities for Eligible States**

** Per WIA Sec. 173(e): Up to $15 million from Dislocated Workers Emergency reserve is to be made available to not more than 8 States with the largest ratio of JTPA formula amount to WIA formula amount.*

| State | WIA Calculation | JTPA Calculation | JTPA less WIA | JTPA less Quotient | Eligible * States | Additional $* |
|---|---|---|---|---|---|---|
| **Total** | **$862,038,502** | **$861,908,094** | **($130,408)** | | **5** | **$5,438,783** |
| Alabama | 10,998,960 | 10,997,296 | (1,664) | 99.9849% | | |
| Alaska | 3,192,692 | 3,163,623 | (29,069) | 99.0895% | | |
| Arizona | 15,909,885 | 15,765,028 | (144,857) | 99.0895% | | |
| Arkansas | 8,052,417 | 7,979,101 | (73,316) | 99.0895% | | |
| California | 117,265,072 | 116,197,395 | (1,067,677) | 99.0895% | | |
| Colorado | 10,329,354 | 10,235,307 | (94,047) | 99.0895% | | |
| Connecticut | 6,658,773 | 6,598,147 | (60,626) | 99.0895% | | |
| Delaware | 2,155,096 | 2,154,770 | (326) | 99.9849% | | |
| District of Columbia | 3,042,614 | 3,042,154 | (460) | 99.9849% | | |
| Florida | 29,020,019 | 29,015,629 | (4,390) | 99.9849% | | |
| Georgia | 20,998,433 | 21,183,549 | 185,116 | 100.8816% | 1 | 185,116 |
| Hawaii | 2,632,284 | 2,631,886 | (398) | 99.9849% | | |
| Idaho | 2,204,869 | 2,204,535 | (334) | 99.9849% | | |
| Illinois | 42,158,210 | 41,774,368 | (383,842) | 99.0895% | | |
| Indiana | 18,905,421 | 18,733,290 | (172,131) | 99.0895% | | |
| Iowa | 3,351,258 | 3,350,752 | (506) | 99.9849% | | |
| Kansas | 5,824,173 | 5,823,292 | (881) | 99.9849% | | |
| Kentucky | 15,900,602 | 17,440,682 | 1,540,080 | 109.6857% | 1 | 1,540,080 |
| Louisiana | 18,758,884 | 20,804,810 | 2,045,926 | 110.9064% | 1 | 2,045,926 |
| Maine | 2,971,851 | 2,944,792 | (27,059) | 99.0895% | | |
| Maryland | 8,517,777 | 8,440,224 | (77,553) | 99.0895% | | |
| Massachusetts | 15,799,210 | 15,655,361 | (143,849) | 99.0895% | | |
| Michigan | 42,941,848 | 42,550,870 | (390,978) | 99.0895% | | |
| Minnesota | 7,261,394 | 7,260,295 | (1,099) | 99.9849% | | |
| Mississippi | 16,145,344 | 17,809,394 | 1,664,050 | 110.3067% | 1 | 1,664,050 |
| Missouri | 16,972,922 | 16,970,354 | (2,568) | 99.9849% | | |
| Montana | 2,157,629 | 2,157,303 | (326) | 99.9849% | | |
| Nebraska | 2,155,096 | 2,154,770 | (326) | 99.9849% | | |
| Nevada | 3,504,295 | 3,503,765 | (530) | 99.9849% | | |
| New Hampshire | 2,155,096 | 2,154,770 | (326) | 99.9849% | | |
| New Jersey | 17,635,713 | 17,633,045 | (2,668) | 99.9849% | | |
| New Mexico | 5,732,846 | 5,680,650 | (52,196) | 99.0895% | | |
| New York | 59,939,067 | 59,393,333 | (545,734) | 99.0895% | | |
| North Carolina | 19,855,634 | 19,852,630 | (3,004) | 99.9849% | | |
| North Dakota | 2,155,096 | 2,154,770 | (326) | 99.9849% | | |
| Ohio | 39,795,327 | 39,432,998 | (362,329) | 99.0895% | | |
| Oklahoma | 7,570,506 | 7,569,361 | (1,145) | 99.9849% | | |
| Oregon | 13,444,230 | 13,442,196 | (2,034) | 99.9849% | | |
| Pennylvania | 31,818,930 | 31,529,224 | (289,706) | 99.0895% | | |
| Puerto Rico | 36,996,888 | 36,660,038 | (336,850) | 99.0895% | | |
| Rhode Island | 2,902,046 | 2,905,657 | 3,611 | 100.1244% | 1 | 3,611 |
| South Carolina | 19,333,335 | 19,157,308 | (176,027) | 99.0895% | | |
| South Dakota | 2,155,096 | 2,154,770 | (326) | 99.9849% | | |
| Tennessee | 20,174,949 | 19,991,260 | (183,689) | 99.0895% | | |
| Texas | 74,025,981 | 73,351,988 | (673,993) | 99.0895% | | |
| Utah | 3,875,705 | 3,875,119 | (586) | 99.9849% | | |
| Vermont | 2,155,096 | 2,154,770 | (326) | 99.9849% | | |
| Virginia | 9,440,102 | 9,354,152 | (85,950) | 99.0895% | | |
| Washington | 18,747,455 | 18,576,763 | (170,692) | 99.0895% | | |
| West Virginia | 5,104,509 | 5,103,737 | (772) | 99.9849% | | |
| Wisconsin | 9,083,417 | 9,082,043 | (1,374) | 99.9849% | | |
| Wyoming | 2,155,096 | 2,154,770 | (326) | 99.9849% | | |

Attachment V

U. S. Department of Labor
Employment and Training Administration
Employment Service (Wagner-Peyser)
PY 2007 Final vs PY 2006 Final Allotments

| State | Final PY 2006 | Final PY 2007 | Difference | % Difference |
|---|---|---|---|---|
| **Total** | **$715,882,860** | **$715,883,000** | **$140** | **0.00%** |
| Alabama | 9,518,047 | 9,347,342 | (170,705) | -1.79% |
| Alaska | 7,586,320 | 7,586,322 | 2 | 0.00% |
| Arizona | 11,900,417 | 12,092,949 | 192,532 | 1.62% |
| Arkansas | 5,760,123 | 6,053,152 | 293,029 | 5.09% |
| California | 80,512,528 | 79,764,170 | (748,358) | -0.93% |
| Colorado | 10,940,068 | 10,939,634 | (434) | 0.00% |
| Connecticut | 7,695,536 | 7,682,875 | (12,661) | -0.16% |
| Delaware | 1,949,309 | 1,949,309 | 0 | 0.00% |
| District of Columbia | 2,765,765 | 2,705,590 | (60,175) | -2.18% |
| Florida | 34,575,494 | 34,464,846 | (110,648) | -0.32% |
| Georgia | 19,895,080 | 19,969,831 | 74,751 | 0.38% |
| Hawaii | 2,647,605 | 2,596,357 | (51,248) | -1.94% |
| Idaho | 6,320,755 | 6,320,756 | 1 | 0.00% |
| Illinois | 29,345,833 | 29,073,531 | (272,302) | -0.93% |
| Indiana | 14,044,856 | 14,184,742 | 139,886 | 1.00% |
| Iowa | 6,873,400 | 6,831,619 | (41,781) | -0.61% |
| Kansas | 6,337,808 | 6,314,960 | (22,848) | -0.36% |
| Kentucky | 9,112,675 | 9,278,193 | 165,518 | 1.82% |
| Louisiana | 10,058,961 | 9,840,106 | (218,855) | -2.18% |
| Maine | 3,758,892 | 3,758,893 | 1 | 0.00% |
| Maryland | 12,106,453 | 12,082,222 | (24,231) | -0.20% |
| Massachusetts | 14,670,250 | 14,647,014 | (23,236) | -0.16% |
| Michigan | 24,180,860 | 24,900,399 | 719,539 | 2.98% |
| Minnesota | 12,068,119 | 12,035,648 | (32,471) | -0.27% |
| Mississippi | 6,799,986 | 6,795,067 | (4,919) | -0.07% |
| Missouri | 13,266,457 | 13,234,925 | (31,532) | -0.24% |
| Montana | 5,165,353 | 5,165,354 | 1 | 0.00% |
| Nebraska | 6,207,740 | 6,207,741 | 1 | 0.00% |
| Nevada | 4,882,445 | 5,202,012 | 319,567 | 6.55% |
| New Hampshire | 2,880,256 | 2,875,081 | (5,175) | -0.18% |
| New Jersey | 18,876,142 | 19,147,730 | 271,588 | 1.44% |
| New Mexico | 5,796,434 | 5,796,435 | 1 | 0.00% |
| New York | 41,840,762 | 41,502,859 | (337,903) | -0.81% |
| North Carolina | 19,088,555 | 19,033,933 | (54,622) | -0.29% |
| North Dakota | 5,259,875 | 5,259,876 | 1 | 0.00% |
| Ohio | 26,664,750 | 26,623,377 | (41,373) | -0.16% |
| Oklahoma | 7,237,217 | 7,206,821 | (30,396) | -0.42% |
| Oregon | 8,963,181 | 8,872,270 | (90,911) | -1.01% |
| Pennsylvania | 27,367,408 | 27,240,395 | (127,013) | -0.46% |
| Puerto Rico | 8,686,564 | 8,635,065 | (51,499) | -0.59% |
| Rhode Island | 2,434,419 | 2,546,416 | 111,997 | 4.60% |
| South Carolina | 9,911,509 | 10,158,224 | 246,715 | 2.49% |
| South Dakota | 4,861,333 | 4,861,334 | 1 | 0.00% |
| Tennessee | 12,855,937 | 13,096,271 | 240,334 | 1.87% |
| Texas | 49,533,693 | 49,560,678 | 26,985 | 0.05% |
| Utah | 8,329,797 | 8,148,564 | (181,233) | -2.18% |
| Vermont | 2,277,326 | 2,277,326 | 0 | 0.00% |
| Virginia | 15,092,953 | 15,084,682 | (8,271) | -0.05% |
| Washington | 14,858,235 | 14,784,734 | (73,501) | -0.49% |
| West Virginia | 5,564,276 | 5,564,277 | 1 | 0.00% |
| Wisconsin | 13,082,249 | 13,108,238 | 25,989 | 0.20% |
| Wyoming | 3,771,658 | 3,771,659 | 1 | 0.00% |
| **State Total** | **696,181,664** | **696,181,804** | **140** | **0.00%** |
| Guam | 326,555 | 326,555 | 0 | 0.00% |
| Virgin Islands | 1,374,641 | 1,374,641 | 0 | 0.00% |
| **Outlying Areas Total** | **1,701,196** | **1,701,196** | **0** | **0.00%** |
| **Postage Reserve** | **18,000,000** | **18,000,000** | **0** | **0.00%** |

**Attachment VI**

U. S. Department of Labor
Employment and Training Administration
**Work Opportunity and Welfare-to-Work Tax Credits**
**FY 2007 vs FY 2006 State Allotments**

| State | FY 2006 | FY 2007 | Difference | % Difference |
|---|---|---|---|---|
| **Total** | **$17,677,440** | **$17,677,000** | **($440)** | **0.0%** |
| Alabama | 233,262 | 262,894 | 29,632 | 12.7% |
| Alaska | 64,000 | 64,000 | 0 | 0.0% |
| Arizona | 283,087 | 268,926 | (14,161) | -5.0% |
| Arkansas | 254,534 | 241,801 | (12,733) | -5.0% |
| California | 1,955,447 | 1,857,628 | (97,819) | -5.0% |
| Colorado | 157,955 | 205,336 | 47,381 | 30.0% |
| Connecticut | 211,438 | 200,861 | (10,577) | -5.0% |
| Delaware | 64,000 | 64,000 | 0 | 0.0% |
| District of Columbia | 64,000 | 64,000 | 0 | 0.0% |
| Florida | 736,725 | 699,871 | (36,854) | -5.0% |
| Georgia | 423,384 | 402,205 | (21,179) | -5.0% |
| Hawaii | 64,000 | 64,000 | 0 | 0.0% |
| Idaho | 64,000 | 64,000 | 0 | 0.0% |
| Illinois | 871,880 | 828,265 | (43,615) | -5.0% |
| Indiana | 417,954 | 543,327 | 125,373 | 30.0% |
| Iowa | 210,385 | 199,861 | (10,524) | -5.0% |
| Kansas | 163,515 | 155,335 | (8,180) | -5.0% |
| Kentucky | 297,436 | 282,557 | (14,879) | -5.0% |
| Louisiana | 372,309 | 353,685 | (18,624) | -5.0% |
| Maine | 64,919 | 64,000 | (919) | -1.4% |
| Maryland | 345,643 | 328,353 | (17,290) | -5.0% |
| Massachusetts | 311,141 | 295,577 | (15,564) | -5.0% |
| Michigan | 543,406 | 694,320 | 150,914 | 27.8% |
| Minnesota | 290,504 | 275,972 | (14,532) | -5.0% |
| Mississippi | 167,518 | 179,281 | 11,763 | 7.0% |
| Missouri | 465,212 | 441,940 | (23,272) | -5.0% |
| Montana | 64,000 | 64,000 | 0 | 0.0% |
| Nebraska | 135,580 | 128,798 | (6,782) | -5.0% |
| Nevada | 105,600 | 100,318 | (5,282) | -5.0% |
| New Hampshire | 66,634 | 64,000 | (2,634) | -4.0% |
| New Jersey | 520,786 | 494,734 | (26,052) | -5.0% |
| New Mexico | 144,537 | 137,307 | (7,230) | -5.0% |
| New York | 973,713 | 925,004 | (48,709) | -5.0% |
| North Carolina | 501,136 | 476,067 | (25,069) | -5.0% |
| North Dakota | 64,000 | 64,000 | 0 | 0.0% |
| Ohio | 741,565 | 869,949 | 128,384 | 17.3% |
| Oklahoma | 169,976 | 161,473 | (8,503) | -5.0% |
| Oregon | 187,567 | 178,184 | (9,383) | -5.0% |
| Pennylvania | 728,120 | 691,697 | (36,423) | -5.0% |
| Puerto Rico | 107,303 | 101,935 | (5,368) | -5.0% |
| Rhode Island | 73,828 | 70,135 | (3,693) | -5.0% |
| South Carolina | 190,266 | 180,748 | (9,518) | -5.0% |
| South Dakota | 64,000 | 64,000 | 0 | 0.0% |
| Tennessee | 590,107 | 767,120 | 177,013 | 30.0% |
| Texas | 1,239,545 | 1,177,538 | (62,007) | -5.0% |
| Utah | 100,233 | 104,280 | 4,047 | 4.0% |
| Vermont | 64,000 | 64,000 | 0 | 0.0% |
| Virginia | 387,743 | 368,347 | (19,396) | -5.0% |
| Washington | 337,812 | 320,913 | (16,899) | -5.0% |
| West Virginia | 144,934 | 137,684 | (7,250) | -5.0% |
| Wisconsin | 280,155 | 266,141 | (14,014) | -5.0% |
| Wyoming | 64,000 | 64,000 | 0 | 0.0% |
| **State Total** | **17,144,794** | **17,144,367** | **(427)** | **0.0%** |
| Virgin Islands | 20,000 | 20,000 | 0 | 0.0% |
| Postage Reserve | 512,646 | 512,633 | (13) | 0.0% |

[FR Doc. E7–6487 Filed 4–5–07; 8:45 am]
BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0036]**

### Mechanical Power Presses Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)). The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that employers maintain the mechanical power presses used by the employees in safe operating condition.

**DATES:** Comments must be submitted (postmarked, sent, or received) by June 5, 2007.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0036, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0036). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it.

Paragraph (e)(1)(i) of § 1910.217 requires employers to establish and follow a program of periodic and regular inspections of power presses to ensure that all their parts, auxiliary equipment, and safeguards are in safe operating condition and adjustment. Employers must maintain a certification record of inspections that includes the date of inspection, the signature of the person who performed the inspection, and the serial number, or other identifier, of the power press that was inspected.

Paragraph (e)(1)(ii) of § 1910.217 requires employers to inspect and test each press no less than weekly to determine the condition of the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism. Employers must perform and complete necessary maintenance or repair or both before the press is operated. In addition, employers must maintain a record of inspections, tests, and maintenance work. The record must include the date of the inspection, test, or maintenance; the signature of the person who performed the inspection, test, or maintenance; and the serial number, or other identifier, of the press that was inspected, tested, or maintained.

The certification records required in 29 CFR 1910.217(e)(1)(i) and (e)(1)(ii) are necessary to ensure compliance with the requirement to inspect mechanical power presses. The inspection of mechanical power presses is critical to ensuring that employers maintain the presses in safe operating condition for employees. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)). The Agency is requesting to retain its existing burden hour estimate associated with this Standard at 1,373,054. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)).

*OMB Number:* 1218–0229.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 295,000.

*Frequency:* Monthly, weekly.

*Average Time per Response:* Varies from 2 minutes (.03 hour) to disclose certification records to 20 minutes (.33 hour) to inspect the parts, auxiliary equipment, and safeguards of each mechanical power press.

*Total Annual Burden Hours:* 1,373,054.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (OSHA Docket No. OSHA–2007–0036). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document as well as news releases and other relevant information also are available at OSHA's Web page at *http://www.osha.gov.*

## V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on April 3, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor.*

[FR Doc. E7–6434 Filed 4–5–07; 8:45 am]

BILLING CODE 4510–26–P

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# NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–27]**

## Notice of Issuance of Renewed License, BWX Technologies, Inc., Lynchburg, VA

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance of license.

**FOR FURTHER INFORMATION CONTACT:** Billy Gleaves, Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), Mail Stop T–8F42, Washington, DC 20555, telephone: (301) 415–5848; fax number (301) 415–5955; e-mail: *bcg@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

Pursuant to 10 CFR 2.106, the NRC is providing notice of issuance of Materials License SNM–42 to BWX Technologies, Inc., (the licensee), to authorize continuing operation of the licensee's Mt. Athos facility in Lynchburg, Virginia. The licensee's request for the renewal of its license was previously noticed in the **Federal Register** on March 6, 2006 (71 FR 11231), with a notice of opportunity to request a hearing that was open for 60 days. No requests for a hearing were received during the 60-day period. The associated Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on March 31, 2006.

This renewed license complies with standards and requirements of the Atomic Energy Act of 1954, as amended, and NRC's regulations as set forth in 10 CFR Chapter I. Accordingly, the renewed license was issued on March 29, 2007 and was effective immediately.

## II. Further Information

The NRC prepared a Safety and Safeguards Evaluation Report that documented the information reviewed, including NRC's conclusion. The Safety and Safeguards Evaluation Report and other related documents contain sensitive, unclassified security information, and is therefore deemed Official Use Only and will not be placed in the Public Document Room or the Publicly Available Records component of the NRC's Agencywide Documents Access and Management System (ADAMS) document system.

Dated at Rockville, Maryland, this 29th day of March 2007.

For the Nuclear Regulatory Commission.

**Gary S. Janosko,**

*Deputy Director, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E7–6480 Filed 4–5–07; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[EA–06–233, Docket No.: 70–1113, License No.: SNM–1097]**

## In the Matter of Global Nuclear Fuel—Americas, LLC, and all Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information (Effective Immediately)

### I

Global Nuclear Fuel—Americas, LLC (GNF–A) holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC), authorizing it to engage in an activity subject to regulation by the Commission.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 **Federal Register** 33989 (June 13, 2006)], it is unlikely that licensee employees will be excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include: Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person,[2] from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures or Interim Compensatory Measures for certain radioactive materials. The requirements imposed by these Orders, and certain measures that licensees have developed to comply with the Orders, were designated by the NRC as SGI.

### II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know, and satisfies the trustworthiness and reliability requirements described in Attachment 2 to this Order.

To provide assurance that GNF–A is implementing appropriate measures to a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history check requirements for access to SGI, GNF–A shall implement the requirements of 10 CFR 73.21 and of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

### III

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR PART 70, and 10 CFR PART 73, it is hereby ordered, effective immediately, that GNF-A and all other persons who seek or obtain access to safeguards informations as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59 [71 **Federal Register** 33989 (June 13, 2006)], or who has had a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in the latter two (2) cases that the appropriate documentation is made available to GNF–A's NRC-approved reviewing official.

2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. *GNF–A shall comply with the following requirements:*

1. GNF–A shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 1 to this Order.

2. GNF–A shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

who: (a) The licensee nominates as the ''reviewing official'' for determining access to SGI by other individuals; and (b) has an established need-to-know the information and has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 2 to this Order. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as GNF–A's reviewing official.[3] GNF–A may, at the same time or later, submit the fingerprints of other individuals to whom GNF–A seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 1 to this Order.

3. GNF–A may allow any individual who currently has access to SGI, in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have access to SGI. GNF–A shall make determinations on continued access to SGI within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. GNF–A shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including Attachment 1; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide GNF–A's justification for seeking relief from, or variation of, any specific requirement.

GNF–A's responses to C.1., C.2., C.3, and C.4, above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, GNF–A responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

[3] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by GNF–A.

## IV

In accordance with 10 CFR 2.202, GNF–A must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which GNF–A or other entities adversely affected rely, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to GNF–A, if the answer or hearing request is by an entity other than GNF–A. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov*. If an entity other than GNF–A requests a hearing, that entity shall set forth, with particularity, the manner in which their interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by GNF–A, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), GNF–A may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III, shall be final twenty (20) days from the date of this Order without, further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified above in Section III, shall be final when the extension expires, if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of March 2007.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Director, Office of Nuclear Material Safety and Safeguards.*

## Attachment 1—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

### General Requirements

Licensees shall comply with the requirements of this attachment.

A. 1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal

security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements included in Attachment 2 to this Order, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials, in compliance with C.2 of the subject Order. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

**Prohibitions**

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

**Procedures for Processing Fingerprint Checks**

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

**Right To Correct and Complete Information**

Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

**Protection of Information**

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

**Attachment 2—Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information**

In order to ensure the safe handling, use, and control of information designated as Safeguards Information, each licensee shall control and limit access to the information to only those individuals who have established the need-to-know the information, and are

considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to Safeguards Information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the information.

The Licensee shall comply with the requirements of this attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

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## NUCLEAR REGULATORY COMMISSION

**[ES–06–236; Docket N0. 40–3392; License No. SUB–526]**

## In the Matter of Honeywell International, Inc. and all Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information (Effective Immediately)

### I

Honeywell International, Inc. (Honeywell), Metropolis, IL holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC), authorizing it to engage in an activity subject to regulation by the Commission.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 **Federal Register** 33989 (June 13, 2006)], it is unlikely that licensee employees will be excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include: Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person,[2] from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures or Interim Compensatory Measures for certain radioactive materials. The requirements imposed by these Orders, and certain measures that licensees have developed to comply with the Orders, were designated by the NRC as SGI.

### II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know, and satisfies the trustworthiness and reliability requirements described in Attachment 2 to this Order.

To provide assurance that Honeywell is implementing appropriate measures to a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history check requirements for access to SGI, Honeywell shall implement the requirements of 10 CFR 73.21 and of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

### III

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR PART 40, and 10 CFR PART 73, it is hereby ordered, effective immediately, that Honeywell and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59 [71 **Federal Register** 33989 (June 13, 2006)], or who has had a favorably-decided U. S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in the latter two (2) cases that the appropriate documentation is made available to Honeywell's NRC-approved reviewing official.

2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

*C. Honeywell shall comply with the following requirements:*

1. Honeywell shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 1 to this Order.

2. Honeywell shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who: (a) The licensee nominates as the ''reviewing official'' for determining access to SGI by other individuals; and (b) has an established need-to-know the information and has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 2 to this Order. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as Honeywell's reviewing official.[3] Honeywell may, at the same time or later, submit the fingerprints of other individuals to whom Honeywell seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 1 to this Order.

3. Honeywell may allow any individual who currently has access to SGI, in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have access to SGI. Honeywell shall make determinations on continued access to SGI within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. Honeywell shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including Attachment 1; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide Honeywell's justification for seeking relief from, or variation of, any specific requirement.

Honeywell's responses to C.1., C.2., C.3, and C.4, above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Honeywell's responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by Honeywell.

**IV**

In accordance with 10 CFR 2.202, Honeywell must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which Honeywell or other entities adversely affected rely, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, *ATTN:* Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to Honeywell, if the answer or hearing request is by an entity other than Honeywell. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov*. If an entity other than Honeywell requests a hearing, that entity shall set forth, with particularity, the manner in which their interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by Honeywell, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Honeywell may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III, shall be final twenty (20) days from the date of this Order without, further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified above in Section III, shall be final when the extension expires, if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of March 2007.

[3] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Director, Office of Nuclear Material Safety and Safeguards.*

## Attachment 1—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

### General Requirements

Licensees shall comply with the requirements of this attachment.

A. 1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it in conjunction with the trustworthiness and reliability requirements in Attachment 2 to this Order when making a determination to grant access to SGI to individuals who have a need-to-know.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination to grant access to SGI.

B. The licensee shall notify the Nuclear Regulatory Commission (NRC) of any desired change in reviewing officials, in compliance with C.2 of the subject Order. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check, therefore, will be permitted to serve as the licensee's reviewing official.

### Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check, obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

### Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint records submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with the NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

### Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual, the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any necessary changes in accordance with the information supplied by that agency. The licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

### Protection of Information

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information

may re-disseminate the information to any other individual who does not have a need-to -know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

**Attachment 2—Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information**

In order to ensure the safe handling, use, and control of information designated as Safeguards Information, each licensee shall control and limit access to the information to only those individuals who have established the need-to-know the information, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to Safeguards Information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the information.

The Licensee shall comply with the requirements of this attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

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## NUCLEAR REGULATORY COMMISSION

**[EA–06–235, Docket No.: 70–1151, License No.: SNM–1107]**

## In the Matter of Westinghouse Electric Company LLC and All Other Persons Who Seek or Obtain Access To Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information (Effective Immediately)

### I

Westinghouse Electric Company, LLC (WEC), Columbia, SC holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC), authorizing it to engage in an activity subject to regulation by the Commission.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 **Federal Register** 33989 (June 13, 2006)], it is unlikely that licensee employees will be excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include: Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person,[2] from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures or Interim Compensatory Measures for certain radioactive materials. The requirements imposed by these Orders, and certain measures that licensees have developed to comply with the Orders, were designated by the NRC as SGI.

### II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need- to -know, and satisfies the trustworthiness and reliability requirements described in Attachment 2 to this Order.

To provide assurance that WEC is implementing appropriate measures to a consistent level of protection to prohibit unauthorized disclosure of SGI, and to

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

comply with the fingerprinting and criminal history check requirements for access to SGI, WEC shall implement the requirements of 10 CFR 73.21 and of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

**III**

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 70, and 10 CFR Part 73, *It is hereby ordered,* EFFECTIVE IMMEDIATELY, that WEC and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this Order.

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59 [71 **Federal Register** 33989 (June 13, 2006)], or who has had a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active Federal security clearance, provided in the latter two (2) cases that the appropriate documentation is made available to WEC's NRC-approved reviewing official.

2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. WEC shall comply with the following requirements:

1. WEC shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 1 to this Order.

2. WEC shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who: (a) The licensee nominates as the ''reviewing official'' for determining access to SGI by other individuals; and (b) has an established need- to -know the information and has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 2 to this Order. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as WEC's reviewing official.[3] WEC may, at the same time or later, submit the fingerprints of other individuals to whom WEC seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 1 to this Order.

3. WEC may allow any individual who currently has access to SGI, in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have access to SGI. WEC shall make determinations on continued access to SGI within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. WEC shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including Attachment 1; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide WEC's justification for seeking relief from, or variation of, any specific requirement.

WEC's responses to C.1., C.2., C.3., and C.4., above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, WEC responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by WEC.

**IV**

In accordance with 10 CFR 2.202, WEC must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which WEC or other entities adversely affected rely, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to WEC, if the answer or hearing request is by an entity other than WEC. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov.* If an entity other than WEC requests a hearing, that entity shall set forth, with particularity, the manner in which their interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by WEC, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing

[3] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), WEC may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III, shall be final twenty (20) days from the date of this Order without, further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified above in Section III, shall be final when the extension expires, if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 29th day of March, 2007.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Director, Office of Nuclear Material Safety and Safeguards.*

**Attachment 1—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information**

**General Requirements**

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it in conjunction with the trustworthiness and reliability requirements in Attachment 2 to this Order when making a determination to grant access to SGI to individuals who have a need-to-know.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination to grant access to SGI.

B. The licensee shall notify the Nuclear Regulatory Commission (NRC) of any desired change in reviewing officials, in compliance with C.2 of the subject Order. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check, therefore, will be permitted to serve as the licensee's reviewing official.

*Prohibitions*

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check, obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

*Procedures for Processing Fingerprint Checks*

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint records submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with the NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

*Right To Correct and Complete Information*

Prior to any final adverse determination, the licensee shall make available, to the individual, the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any necessary changes in accordance with the information supplied by that agency. The licensee must allow at least

ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

*Protection of Information*

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

**Attachment 2—Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information**

In order to ensure the safe handling, use, and control of information designated as Safeguards Information, each licensee shall control and limit access to the information to only those individuals who have established the need-to-know the information, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to Safeguards Information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the information.

The Licensee shall comply with the requirements of this attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (*i.e.*, seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

[FR Doc. 07–1697 Filed 4–5–07; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon written request, copies available from:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Form N–CSR; SEC File No. 270–512; OMB Control No. 3235–0570.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form N–CSR (17 CFR 249.331 and 17 CFR 274.128) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Securities Exchange Act''), and under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''), Certified Shareholder Report of Registered Management Investment Companies.'' Form N–CSR is a combined reporting form used by management investment companies to file certified shareholder reports under the Investment Company Act and under the Securities Exchange Act. Form N–CSR is to be used for reports under section 30(b)(2) of the Investment Company Act and section 13(a) or 15(d) of the Securities Exchange Act, filed pursuant to rule 30b2–1(a) under the Investment Company Act (17 CFR 270.30b2–1(a)). Form N–CSR reports are to be filed with the Commission not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1). The information provided on Form N–CSR may be used by the Commission in its regulatory, disclosure review, inspection, and policymaking roles. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The Commission estimates that there are 7,300 reports filed on Form N–CSR annually and that the average number of portfolios referenced in each filing is 2.5. The Commission further estimates that the hour burden for preparing and filing a report on Form N–CSR is 7.57 hours per portfolio. Given that filings on Form N–CSR are filed semi-annually, filings on Form N–CSR require 15.14 hours per portfolio each year. The total annual hour burden for Form N–CSR, therefore, is estimated to be 138,153 hours.

The information collection requirements imposed by Form N–CSR are mandatory. Responses to the collection of information will not be kept confidential. 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 control number.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way,

Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 28, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–6491 Filed 4–5–07; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon written request, copies available from:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Form S–8; OMB Control No. 3235–0066; SEC File No. 270–66.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form S–8 (17 CFR 239.16b) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) is the primary registration statement used by qualified registrants to register securities issued in connection with employee benefit plans. We estimate that Form S–8 takes approximately 24 hours per response to prepare and is filed by 3,847 respondents. We estimate that 50% of the 24 hours per response (12 hours per response) is prepared by the filer for a total annual reporting burden of 46,164 hours (12 hours per response × 3,847 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 29, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–6492 Filed 4–5–07; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collections; Comment Request

*Upon written request, copies available from:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extensions:*

Rule 155; OMB Control No. 3235–0549 ; SEC File No. 270–492.

Rule 477; OMB Control No. 3235–0550; SEC File No. 270–493.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 155 (17 CFR 230.155) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. Rule 155 requires any prospectus filed as a part of a registration statement after a private offering to include disclosure regarding abandonment of the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. The likely respondents will be companies. Rule 155 takes approximately 4 hours per response to prepare and is filed by 600 respondents. We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the filer for a total annual reporting burden of 1,200 hours (2 hours per response × 600 responses).

Rule 477 (17 CFR 230.477) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) sets forth procedures for withdrawing a registration statement or any amendment or exhibits thereto. The rule provides that if a registrant applies for withdrawal in anticipation of reliance on Rule 155's registered-to-private safe harbor, the registrant must state in the withdrawal application that the registrant plans to undertake a subsequent private offering in reliance on the rule. Without this statement, the Commission would not be able to monitor issuers' reliance on, and compliance with, Rule 155(c). The likely respondents will be companies. We estimate that 300 issuers will file Rule 477 submissions annually at an estimated one-hour per response for a total annual burden of 300 hours. We estimate that 100% of the reporting burden is prepared by the issuer.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 29, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–6495 Filed 4–5–07; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 27772; 812–13262]**

## First Trust Exchange-Traded Fund, et al.; Notice of Application

March 30, 2007.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

*Summary of Application:* Applicants request an order to amend a prior order that permits (a) Open-end management investment companies that include series (''Domestic Index Funds'') based on domestic equity securities indexes to issue shares (''Shares'') that can be redeemed only in large aggregations (''Creation Unit Aggregations''); (b) secondary market transactions in Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933; and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Unit Aggregations (''Prior Order'').[1] Applicants seek to amend the Prior Order in order to offer two new series (the ''New Funds'') and future series (''Future International Index Funds,'' and together with the New Funds, the ''International Index Funds'') based on foreign equity securities indexes.[2] In addition the order would delete a condition related to future relief in the Prior Order and amend condition 2 in the Prior Order.

*Applicants:* First Trust Exchange-Traded Fund (''Initial Trust''), First Trust Exchange-Traded Fund II; First Trust Exchange-Traded AlphaDEX Fund (collectively, the ''Trusts''), First Trust Advisors, L.P. (''Advisor''), and First Trust Portfolios, L.P. (''Distributor'').

*Filing Dates:* The application was filed on February 13, 2006, and amended on March 30, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 24, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 1001 Warrenville Road, Lisle, IL 60532.

**FOR FURTHER INFORMATION CONTACT:** John Yoder, Senior Counsel, at (202) 551–6878, or Stacy L. Fuller, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

### Applicants' Representations

1. The Trusts, Massachusetts business trusts, are each open-end management investment companies registered under the Act. The Trusts are organized as series funds with multiple series. The Initial Trust currently offers twelve Funds. The Advisor, which is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), or an entity controlling, controlled by or under common control with the Advisor (included in the term ''Advisor''), will serve as investment adviser to each Fund. The Advisor may in the future retain one or more sub-advisers (''Sub-Advisors'') to manage particular Funds'' portfolios. Any Sub-Advisor will be registered under the Advisers Act or exempt from registration. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''), serves as the principal underwriter and distributor for the Funds.

2. The Trusts and other registered open-end management investment companies (''Future Trusts,'' included in the term ''Trusts'') are currently permitted to offer Funds based on domestic equity securities indexes (''Domestic Underlying Indexes'') in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trusts to offer the International Index Funds, which are based on foreign equity securities indexes (''International Underlying Indexes,'' and together with Domestic Underlying Indexes, the ''Underlying Indexes''). The International Index Funds would operate in a manner identical to the existing Funds, except as described in the application (and summarized in this notice).

3. The New Funds will invest in portfolios of securities consisting predominantly of the component securities of the Dow Jones STOXX Select Dividend 30 Index and FTSE EPRA/NAREIT Global Real Estate Index (each included in the term International Underlying Index). The Dow Jones STOXX Select Dividend 30 Index is a dividend weighted index designed to measure the performance of European companies, which pay dividends, relative to their home markets. The FTSE EPRA/NAREIT Global Real Estate Index is an index designed to track the performance of certain listed real estate companies and real estate investment trusts in North America, Europe and Asia. No entity that creates, compiles, sponsors, or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of a Trust, the Advisor, any Sub-Advisor, the promoter or Distributor of a Fund.

4. Under the Prior Order, each Fund is subject to the representation that it will invest at least 90% of its assets in the component securities of its Underlying Index (''Component Securities''). Applicants request relief to permit each International Index Fund, for purposes of satisfying this requirement, to count certain depositary receipts (''Depositary Receipts'') that represent Component Securities as well as Component Securities. Applicants represent that each International Index Fund would thus invest at least 90% of its assets in the Component Securities of its International Underlying Index and Depositary Receipts representing such

[1] *First Trust Exchange-Traded Fund, et al.*, Investment Company Act Release Nos. 27051 (Aug. 26, 2005) (notice) and 27068 (Sept. 20, 2005) (order).

[2] International Index Funds and Domestic Index Funds are referred to collectively as ''Funds.'' Future International Funds and future Domestic Index Funds are referred to collectively as ''Future Index Funds.''

Component Securities.[3] Applicants state that an International Index Fund generally would only hold Depositary Receipts if the Advisor believed that holding the Depositary Receipts, rather than holding the Component Securities, would benefit the International Index Fund.

5. Applicants state that all discussions contained in the application for the Prior Order are equally applicable to the International Index Funds, except as specifically noted by applicants (as summarized in this notice). Applicants assert that the International Index Funds will operate in a manner identical to the Funds and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

**Applicants' Legal Analysis**

*Section 22(e) of the Act*

1. In connection with applicants' request for relief to permit the operations of International Index Funds, applicants seek to amend the Prior Order to add relief from section 22(e) of the Act. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the International Index Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the International Index Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Unit Aggregations, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the International Index Funds. Applicants request relief under section 6(c) of the Act from section 22(e) in such circumstances to allow the International Index Funds to pay redemption proceeds up to 12 calendar days after the tender of any Creation Unit Aggregation for redemption. At all other times and except as disclosed in the relevant statement of additional information (''SAI''), applicants expect that each International Index Fund will be able to deliver redemption proceeds within seven days.[4] With respect to Future International Index Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

2. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI for each International Index Fund will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant International Index Fund.

*Future Relief*

3. Applicants also seek to amend the Prior Order to modify the terms under which a Trust may offer Future Index Funds. The Prior Order is currently subject to a condition that does not permit relief for Future Index Funds unless applicants request and receive with respect to such Future Index Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or the Future Index Fund could be listed on an Exchange without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

4. The order would amend the Prior Order to delete this condition. Any Future Index Funds will: (a) Be advised by the Advisor; (b) track Underlying Indexes that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Advisor, the Distributor, a Trust or any Sub-Advisor or promoter of a Fund; and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

5. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Index Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the existing Funds and would remain appropriate for Future Index Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Index Fund to be listed on an Exchange without the need for a rule 19b–4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

*Condition to Prior Order*

6. Applicants also seek to amend the Prior Order by replacing existing condition 2 to the Prior Order. Existing condition 2 to the Prior Order currently provides that each Fund's prospectus (''Prospectus'') and product description (''Product Description'') will clearly disclose that, for purposes of the Act, Shares are issued by the Fund and the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act. Applicants wish to replace this condition in the Prior Order with the condition stated below.

**Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the same conditions as the Prior Order, except for condition 1 to the Prior Order, which will be deleted, and condition 2 to the Prior Order, which will be replaced with the following condition:

Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company, and the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in the Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–6392 Filed 4–5–07; 8:45 am]

BILLING CODE 8010–01–P

[3] Applicants state that the Depositary Receipts will be listed on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange'') or a foreign exchange. The Advisor, Sub-Advisor and their affiliated persons will not serve as the depositary bank for any Depositary Receipts held by an International Index Fund.

[4] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55566; File No. SR–NYSEArca–2007–33]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Amendments to the Amended and Restated Certificate of Incorporation of NYSE Euronext

April 2, 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 March 28, 2007, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain technical changes to the amended and restated certificate of incorporation of NYSE Euronext to remove all references to ''Year 1 NYSE Shares'' and ''Year 1 NYSE Group Shares'' from the provisions regarding transfer restrictions and to clarify that it is the currently operative certificate of incorporation of NYSE Group, Inc. (and not the certificate of incorporation of NYSE Group, Inc. that will be operative after the closing of the Combination (as defined below)) which contains the definitions of the terms ''Year 2 NYSE Share'' and ''Year 3 NYSE Share.'' The text of the proposed rule change is available at the Exchange, *http://www.nyse.com*, and the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing to the Commission in connection with the proposed business combination (''Combination'') of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), with Euronext N.V., a company organized under the laws of The Netherlands (''Euronext''). As a result of the Combination, the businesses of NYSE Group (including that of New York Stock Exchange LLC and the Exchange) and Euronext will be held under a single, publicly traded holding company named NYSE Euronext, a Delaware corporation (''NYSE Euronext''). Following the Combination, each of NYSE Group and Euronext (or a successor Dutch holding company) will be a separate subsidiary of NYSE Euronext, and their respective businesses and assets will continue to be held as they are currently held (subject to any post-closing reorganization of Euronext). The Commission has approved the Exchange's rule filing in connection with the Combination (''Combination Filing'')[5] and the Combination is scheduled to close on April 4, 2007.

Subsequent to the Combination Filing's approval, the transfer restrictions on the Year 1 NYSE Shares, as defined in the currently operative certificate of incorporation of NYSE Group, expired, causing the references to ''NYSE Year 1 Shares'' and ''NYSE Group Year 1 Shares'' in the amended and restated certificate of incorporation of NYSE Euronext to become obsolete and potentially confusing. Additionally, the Exchange wishes to clarify that it is the currently operative certificate of incorporation of NYSE Group (and not the certificate of incorporation of NYSE Group that will be operative after the closing of the Combination) in which the terms ''Year 2 NYSE Share'' and ''Year 3 NYSE Share'' are defined. The Exchange is also adding the date on which the amended and restated certificate of incorporation of NYSE Euronext is being filed. The proposed changes do not affect the substance of the amended and restated certificate of incorporation of NYSE Euronext in any way. The Exchange needs the proposed rule change to be effective and operative prior to the consummation of the Combination, as it must file the amended and restated certificate of incorporation of NYSE Euronext with the Delaware Secretary of State before the closing of the Combination,[6] as contemplated by the Combination Filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)[7] of the Act that an exchange have rules that are 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

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 55294 (February 14, 2007), 72 FR 8046 (February 22, 2007) (SR–NYSEArca–2007–05).

[6] The Commission notes that the Exchange included references in the proposed rule change to filing the amended and restated certificate of incorporation of NYSE Euronext with the Delaware Secretary of State and the Secretary of State of New York, before and at the closing of the Combination. The Commission staff clarified with the Exchange that the correct reference should be to filing with the Delaware Secretary of State before the closing of the Combination. Telephone conversation between Janet Kissane, Vice President and Associate General Counsel, NYSE Group, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on March 29, 2007.

[7] 15 U.S.C. 78f(b)(5).

burden on competition; and (C) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, and designate the proposed rule change immediately operative.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Exchange has stated that the amended and restated certificate of incorporation of NYSE Euronext as modified by this proposed rule change must be filed with the Delaware Secretary of State before the closing of the Combination that is scheduled for April 4, 2007. The Commission notes that the proposed modifications to the amended and restated certificate of incorporation of NYSE Euronext are technical changes that are non-substantive. Accordingly, the Commission designates that the proposed rule change become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–NYSEArca–2007–33 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–33. 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–NYSEArca–2007–33 and should be submitted on or before April 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–6494 Filed 4–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] The Exchange also asked the Commission to waive the five-business day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). The Commission is exercising its authority to designate a shorter time, and notes that the Exchange provided the Commission with written notice of its intention to file the proposed rule change on March 26, 2007.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55565; File No. SR–OCC–2007–04]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Portfolio Margining of Customer Securities

April 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on March 2, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's Rule 611, Segregation of Long Option Positions, to allow a clearing member to instruct OCC to unsegregate a long options position that is carried in a customer's portfolio margining account.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In a rule filing submitted in 2003 and subsequently approved by the Commission,[1] OCC created a ''customers' lien account'' in which clearing members are permitted to carry positions and collateral that are carried

[1] Securities Exchange Act Release No,. 50509 (October 8, 2004), 69 FR 61289 (October 15, 2004) (OCC–2003–04).

for customers at the firm level in portfolio margining accounts. In a regular customers account at OCC, all long positions must be ''segregated'' (*i.e.*, held free of OCC's lien and therefore given no value in determining margin requirements) except when a long position is part of a customer spread. This practice was adopted to comply with Commission Rule 15c3–3, which requires that customers' ''fully paid'' and ''excess margin'' securities be held free of lien. Because it is anticipated that brokers will ordinarily be extending credit in portfolio margin accounts, the Commission approved OCC's rule filing effectively providing that longs in such accounts need never be treated as fully paid or excess margin securities. The Division of Market Regulation also issued a ''no action'' letter to the effect that no enforcement action would be taken against broker-dealers under Rule 15c3–3 for failing to segregate customer longs carried in portfolio margin accounts.[2]

OCC has been informed by several clearing members that a customers' lien account is not practical for them because their customer trades are routed to them from many sources and having more than one customers' account could result in a large number of clearing errors.[3] OCC is therefore proposing an alternative procedure (''Proposed Procedure'') for clearing members that are unable or that elect not to use a customers' lien account. Under the Proposed Procedure, a clearing member would be permitted to carry portfolio margin positions in its regular securities customers' account at OCC. When the clearing member submits instructions to unsegregate customer longs that are part of a spread position, it will also submit instructions to unsegregate all longs that are carried at the firm level in customers' portfolio margin accounts. The result of the Proposed Procedure will be that long options required to be segregated in the customers' account will continue to be segregated and longs that would be unsegregated in a customers' lien account will be unsegregated in the regular customers' account.

The lien language in both the regular customers' account and in the customers' lien account provides in effect that to the extent that OCC has a lien on property in the account, the lien secures only other assets in that particular account. This limitation not only ensures that customer longs are not pledged to secure proprietary obligations of the firm in violation of the hypothecation rules, but it is conservative in that it does not allow the longs to secure positions in other customer accounts. Thus, to the extent that regular clearing member customers have unsegregated longs in the account, those positions would be subject to a lien securing the obligations of such clearing member with respect to its portfolio-margining customers whose short positions may be included in the account as well. Conversely, the longs belonging to portfolio-margining customers would collateralize the shorts of regular customers.

OCC believes that the proposed procedure is appropriate under Rule 15c3–3 and the hypothecation rules (Rules 8c–1 and 15c–2) and is appropriate as a matter of policy and fairness. There is no requirement to separate positions of portfolio margining customers from positions of other customers and the separate customers' lien account was intended merely as a convenience to avoid the need for daily submission of instructions to unsegregate long positions in portfolio margining accounts. Clearing members that are willing to accept that burden in order to carry the positions in a regular customers' account should be permitted to do so. OCC has requested supplemental no-action relief from the Commission staff in order to confirm the applicability of the previous no-action relief to long positions in customer's portfolio margining accounts that are carried on an unsegregated basis in the regular customers' account at OCC rather than in a customers' lien account.

In SR–OCC–2003–04, Rule 611 was amended to provide that ''all positions in cleared securities that are carried in a customers' lien account shall be deemed to be unsegregated for purposes of this Rule 611.'' Although OCC's rules do not specifically require that positions in a portfolio margin account at the firm level be carried in a customers' lien account at OCC, the rule filing indicated that they would be. In approving SR–OCC–2003–04 creating the customers' lien account and amending Rule 611, the Commission stated:

> Under the portfolio margining methodology program, all long positions in the customers' lien account will be available as an offset to all short positions, regardless of the identity of the customer. This should provide for a greater diversification benefit to OCC's clearing members in the calculation of their margin. However, because all positions in the customers' lien account will be unsegregated and will be therefore subject to OCC's lien, the long positions in the account will be available to OCC in the event a clearing member fails to settle its obligations relating to a short position. Accordingly, because the proposed rule change is designed to ensure that transactions in securities which are eligible for the new portfolio margining approved by the Commission will be cleared and settled by OCC in a manner that will not reduce the adequacy of collateral available to OCC, the proposed rule change should not adversely affect OCC's ability to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

The Commission's rationale for approving SR–OCC–2003–04 should apply to the Proposed Procedure as well. Rule 611 would simply be amended to provide an additional basis by which a clearing member may give instructions to release long options from segregation—namely when they are carried for a customer in a porfolio margin account.

The proposed rule change is consistent with the purpose and requirements of Section 17A of the Act because it fosters cooperation and competition with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general protects investors and the public interest by facilitating the implementation of portfolio margining programs previously approved by the Commission. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)[4] of the Act, which

[2] Letter to William H. Navin, Executive Vice President, General Counsel and Secretary, OCC (July 14, 2005).

[3] Information from Jean Cawley, Deputy General Counsel (March 26, 2007).

[4] 15 U.S.C. 78q–1(b)(3)(F).

requires that the rules of a clearing agency be designed to provide for the safeguarding of securities and funds which are in its possession or control or for which it is responsible. The proposed rule change will allow OCC's clearing members and their customers to benefit from the portfolio margining program, which includes having greater liquidity and more efficient use of collateral, in a manner that is consistent with OCC's overall risk management process.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow OCC's members to immediately participate in the expanded portfolio margining pilot scheduled to be implemented on April 2, 2007.

## 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–OCC–2007–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2007–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* 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–OCC–2007–04 and should be submitted on or before April 27, 2007.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2007–04) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–6493 Filed 4–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55552; File No. SR–Phlx–2006–87]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, Relating to Options Exchange Officials

March 29, 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 December 14, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change. On February 23, 2007, the Exchange filed Amendment No.1 to the proposed rule change. On March 15, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change is described in Items I, II, and III, below, which Items have been prepared substantially by the Phlx. 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 Phlx proposes to amend various rules related to dispute resolution, requests for relief from the requirements of certain rules, trading halts and order and decorum, by transferring the responsibilities from Exchange Floor Officials[3] to a new category of Exchange staff that would be known as an Options Exchange Official (''OEO''), as described more fully below. OEOs would replace, and assume all authority and responsibility currently handled by, Floor Officials. Thus, Floor Officials would cease to exist on the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.phlx.com,* at the Phlx, and at the Commission's public reference room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to establish a new category of Exchange staff, the OEO.[4] The purpose of Amendment No. 1, which replaces the previous filing in its entirety, is to clarify that OEOs would replace, and assume all authority and responsibility currently handled by, Floor Officials, and to make other technical amendments to the previously submitted rule text. Amendment No. 2

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange By–Law Article VIII.

[4] OEO jurisdiction would be limited to the Exchange's options trading floor and systems. While acting in a similar capacity to Equity Exchange Officials, OEOs would not share any responsibilities or authority with Equity Exchange Officials. *See* Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR–Phlx–2006–43) (Order approving the Exchange's new electronic equity trading system, XLE).

makes clarifying changes to the purpose section and technical corrections to the proposed rule text.

Pursuant to Exchange By-Law Article VIII, Floor Officials, as designees [5] of the Chairpersons of the Options Committee,[6] and Foreign Currency Options Committee,[7] respectively, are authorized to administer the provisions of Exchange By-Laws and Rules of the Exchange pertaining to the respective trading floors and the immediately adjacent premises of the Exchange. They may impose penalties, as applicable, for breaches of their rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors. Additionally, they may rule to nullify, or adjust the terms of, executed trades under specific and limited conditions contained in Exchange rules, and may grant relief from certain requirements of on-floor members and member organizations if authorized to do so by rule.

As described more fully below, in some instances an OEO would assume responsibilities of Exchange staff, particularly in the situation where certain current Floor Official decisions require concurrence of a Market Surveillance officer. In other instances, one single OEO would be authorized to rule on matters that currently require a decision from two Floor Officials. The current process for the review of, or appeal from, from Floor Official decisions [8] (which, under the proposal would become OEO decisions) and the role of the Exchange's Referee [9] would be unchanged.

*Definition of OEO.* Currently, Floor Officials appointed by the respective floor committee chairs, are Exchange members. Under proposed Rule 1(pp), an OEO would be defined as an Exchange staff member or contract employee designated as such by the Exchange's Chief Regulatory Officer (''CRO''). A list of individual OEOs would be displayed on the Exchange website, and would be maintained and updated each time a name is added to, or deleted from, the list of OEOs. The Exchange's Referee would be responsible for maintaining and updating such list. In the event no OEO is available to rule on a particular matter, the CRO or his/her designee would be required to rule on such matter. OEOs would be located on the Exchange's options trading floor and report to the CRO.

OEOs would be members of the Exchange's regulatory staff, including the on-floor surveillance staff, who have sufficient expertise to act in the capacity of an OEO as determined by the CRO. This could include existing Exchange regulatory staff, new hires, or contract employees.

Under the proposal, the Referee may act in the capacity of an OEO respecting initial rulings concerning requests for relief from the requirements of certain enumerated Exchange rules,[10] since such rulings are final and not appealable. The Referee could not, however, rule in the capacity of an OEO concerning, for example, a nullified or adjusted trade resulting from trading dispute or an obvious error, because the Referee would have a conflict of interest in ruling on an appeal from his or her own decision to nullify or adjust such a trade.[11]

*Nullification and Adjustment of Transactions.* Currently, Exchange Floor Officials are authorized to rule on trading disputes occurring on the options trading floor, which could result in the adjustment or nullification of executed transactions.[12] Floor Officials are also currently authorized to nullify or adjust executed transactions in the case of an obvious error as defined in the Exchange's rules.[13] Such rulings can be appealed to the Referee for review. The Referee may uphold, modify, or overturn the ruling. The decision of the Referee concerning these types of rulings is final and may not be appealed to the Exchange's Board of Governors.

OEOs would replace Floor Officials respecting initial rulings on adjustment or nullification of transactions. One OEO may adjust a transaction, and the Exchange proposes to require only one OEO to nullify a transaction as well.[14] The Exchange believes that this should expedite the decision making process for the nullification of transactions. As stated above, such rulings would continue to be appealable to the Referee.

*Initial Requests for Relief.* Floor Officials and, in some instances the Referee, are currently authorized to rule on initial requests for relief from the requirements of certain rules, including, without limitation, quote spread parameters,[15] and disengagement of Exchange automatic execution systems under extraordinary circumstances.[16] Such rulings are final and may not be appealed to the Board.

Similarly, the proposal would authorize OEOs to replace Floor Officials and to make initial rulings concerning requests for relief from the requirements of other Exchange Rules. For example, the proposal would authorize OEOs to rule on requests for relief from Exchange rules relating to: (i) Bid/ask differentials pursuant to Exchange Rule 1014(c) and Options Floor Procedure Advice (''OFPA'') F–6; (ii) disengagement of Exchange automatic execution systems pursuant to Exchange Rule 1080(e) and OFPA A–13; (iii) the determination that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement pursuant to Exchange Rule 1080(c)(i); and (iv) trading halts, openings and re-openings pursuant to Rules 1017, 1047 and 1047A and OFPAs A–12, A–14 and G–2.

Rule 1014(c) and OFPA F–6 set forth the maximum allowable bid/ask differentials, or quote widths, that may be disseminated by specialists and ROTs on the Exchange, depending on the price of the series to be quoted. The Exchange believes that these requirements can have the unintended consequence of requiring those making markets to quote at prices that are unnecessarily narrow, thereby exposing them to great risk if markets move quickly.[17] Two Floor Officials may

[5] The designees of the respective floor Committee chairpersons are generally members of the respective committees and subcommittees thereof.

[6] The Options Committee has general supervision of the dealings of members on the options trading floor. *See* Exchange By-Law Article X, Section 10–20.

[7] The Foreign Currency Options Committee has general supervision of the dealings of members on the foreign currency options trading floor. *See* Exchange By-Law Article X, Section 10–17.

[8] *See* Exchange Rule 124(d).

[9] The Referee is an Exchange employee or independent contractor who is appointed by the Exchange's Board of Governors on the recommendation of the Audit Committee to review Floor Official rulings concerning the nullification and adjustment of transactions in accordance with Rule 124(d), and to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of certain Exchange Rules. *See* Exchange Rule 124, Commentary .02.

[10] *See* proposed Exchange Rule 124, Commentary .02(a). Telephone conversation on March 19, 2007, between Richard Rudolph, Vice President and Counsel, Phlx and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission (''Telephone Conversation'').

[11] *See* proposed Exchange Rule 124, Commentary .01. Telephone Conversation.

[12] *See* Exchange Rule 124. One Floor Official may adjust the terms of a transaction in a dispute; two Floor Officials must determine to nullify a transaction in such a situation.

[13] *See* Exchange Rule 1092. Two Floor Officials must determine that an obvious error (as defined in the rule) occurred in order to nullify a transaction.

[14] Currently, Exchange rules require two Floor Officials to nullify a transaction. *See* Exchange Rule 124(a). *See also* Exchange Rule 1092(e)(ii)(B). The instant proposal would require one OEO to nullify a transaction.

[15] Relief from the established bid/ask differentials may be granted upon the receipt of an approval of two Floor Officials. *See* OFPA F–6.

[16] *See* Exchange Rule 1080(e).

[17] *See, e.g.*, Securities Exchange Act Release No. 50728 (November 23, 2004), 69 FR 69982

Continued

currently grant relief from these differentials during times of peak market activity where options markets and/or the market for securities underlying the option move quickly. Under the proposal, one OEO would be authorized to make such a ruling. The Exchange believes that this should expedite the process for granting or denying such relief by reducing the number of persons required to participate in such a ruling.

*Openings.* Currently, the Exchange provides an automated opening system for options; however, two Floor Officials may direct the manual opening of the affected series where necessary to ensure a fair and orderly market.[18] For example, two Floor Officials may authorize the opening of a series at a price that falls outside of the Exchange's established parameters [19] where necessary to ensure a fair and orderly market.

The Exchange proposes to replace the two Floor Officials with a single OEO, who would have the same authority described above concerning openings. The purpose of this provision is to expedite the approval process for manual openings on the Exchange, thereby enabling the Exchange to open the particular series as quickly as possible.

*Trading Halts, Rotations, and Re-Openings Following a Trading Halt.* Currently, two Floor Officials, with the concurrence of a Market Surveillance officer, are currently authorized to rule on trading halts, rotations and re-openings following a trading halt.[20] The Exchange proposes to amend the rules so that one OEO could make such a ruling. Further, the Exchange proposes to delete the provisions from the rules requiring the concurrence of a Market Surveillance officer in rulings concerning trading halts and re-openings following a trading halt. The purpose of this deletion is to avoid unnecessary delays in locating and informing a Market Surveillance officer of a situation requiring a halt (such as a halt in trading in the underlying security) while volatile market activity continues. The Exchange believes that the timeliness of such a ruling is critical in such situations, because customers and other market participants could be subject to immeasurable risk during the time period between the occurrence of an event requiring a halt or re-opening and the time the decision is made and trading is actually halted. Thus, one OEO could make a prompt ruling without unnecessary delay.

*Order and Decorum.* Currently, a Floor Official may impose on members, member organizations, participants, participant organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange.[21] Under the proposal, OEOs would have this authority. Currently, two Floor Officials may refer such a matter to the Exchange's Business Conduct Committee (''BCC'').[22] Under the proposal, OEOs would have this authority, and one OEO could refer such a matter to the BCC.

Currently, two Floor Officials and an officer of the Exchange may exclude a member, participant, and any associated person of member organizations and participant organizations from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm.[23] The Exchange proposes to authorize one OEO and an officer of the Exchange to do so.

Finally, the Exchange proposes a housekeeping amendment to OFPA F–27, to delete the term ''Floor Procedure Committee,'' because that committee no longer exists on the Exchange.[24]

The Exchange believes that replacing Floor Officials with OEOs should result in a more neutral, efficient and streamlined process for the resolution of disputes on the Exchange, together with an expedited process through which the Exchange may rule on matters currently handled by Floor Officials, including the determination to nullify and adjust transactions; to halt and re-open options series for trading; to conduct manual openings where necessary in the interest of a fair and orderly market; to process requests for relief from the requirements of certain rules; and to more efficiently maintain order and decorum on the Exchange's options trading floor and surrounding areas.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [25] in general, and furthers the objectives of Section 6(b)(5) of the Act [26] in particular, in that 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, by establishing and authorizing neutral OEOs to rule on matters such as trading disputes, requests for relief, openings, trading halts and reopenings, and to efficiently maintain order and decorum on the options trading floor. The Exchange further believes that the proposal is consistent with Section 6(b)(1) [27] of the Act in that the proposal is designed to enable the Exchange to continue to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

*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*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal**

(December 1, 2004) (SR–Phlx–2004–74) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to $5 Bid/Ask Differentials).

[18] *See* Exchange Rule 1017(f).

[19] *See* Exchange Rule 1017(e)(ii).

[20] *See* Exchange Rules 1047 and 1047A. *See also,* OFPA G–2.

[21] *See* Exchange Rule 60.

[22] The Business Conduct Committee has exclusive jurisdiction to (i) monitor compliance with the Exchange Act, the rules and regulations thereunder, the By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board of Governors or any committee of the Exchange, by Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations; (ii) examine into the business conduct and financial condition of Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations; and (iii) authorize the initiation of any disciplinary actions or proceedings brought by the Exchange. *See* Exchange By-Law Article X, Section 10–11.

[23] *See* Exchange Rule 60(b)(i).

[24] *See* Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR–Phlx–2006–43).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(1).

**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 Phlx 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–Phlx–2006–87 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–Phlx–2006–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2006–87 and should be submitted on or before April 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–6496 Filed 4–5–07; 8:45 am]

BILLING CODE 8010–01–P

[28] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA 2007–0023]**

## Privacy Act of 1974, as Amended; Computer Matching Program (SSA/States, SDX–BENDEX–SVES Files)—Match 6001, 6002 and 6004

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a renewal of an existing computer matching program which is scheduled to expire on June 30, 2007.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that SSA is currently conducting with the States.

**DATES:** SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Income Security Programs as shown above.

**SUPPLEMENTARY INFORMATION:**

### A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub.L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

### B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: March 27, 2007.

**Manuel J. Vaz,**

*Acting Deputy Commissioner for Disability and Income Security Programs.*

### Notice of Computer Matching Program, Social Security Administration (SSA) With the States

### A. Participating Agencies

SSA and the States.

### B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards and procedures under which the States may obtain SSN verification and certain SSA information relating to the eligibility for, and payment of, Social Security, Supplemental Security Income and Special Veterans Benefits, including certain tax return, quarters of coverage, prisoner and death information. This information is available from various SSA systems of records.

Individual agreements with the States will describe the information to be

disclosed and the conditions under which SSA agrees to disclose such information.

**C. Authority for Conducting the Matching Program**

This matching program is carried out under the authority of the Privacy Act of 1974, as amended; sections 202(x)(3)(B)(iv), 205(r)(3), 1137, 1106, and 453 of the Social Security Act; sections 402, 412, 421 and 435 of Pub. L. 104–193; Pub. L. 108–458; section 6301(I)(7) of Title 26 of the Internal Revenue Code and SSA's Privacy Act Regulations (20 CFR 410.150).

**D. Categories of Records and Individuals Covered by the Matching Program**

States will provide SSA with names and other identifying information of appropriate benefit applicants or recipients. Specific information from participating States will be matched, as provided in the agreement for the specific programs, with the following systems of records maintained by SSA.

1. SDX—Supplemental Security Record/Special Veteran's Benefits (SSR/SVB) System, SSA/ODSSIS (60–0103);
2. BENDEX—Master Beneficiary Record (MBR), SSA/ORSIS (60–0090) and the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059);
3. EVS—Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OEEAS (60–0058);
4. SVES—SSR/SVB, SSA/ODSSIS (60–0103); MBR, SSA/ORSIS (60–0090); the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059); the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058); and the Prisoner Update Processing System (PUPS), SSA/OEEAS (60–0269);
5. Quarters of Coverage Query—the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059) and the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058);
6. Prisoner Query—PUPS, SSA/OEEAS (60–0269).

**E. Inclusive Dates of the Matching Program**

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

Individual State matching agreements under the matching program will become effective upon the effective date of this matching program or the signing of the agreements by the parties to the individual agreements, whichever is later. The duration of individual State matching agreements will be subject to the timeframes and limitations contained in this matching program.

[FR Doc. E7–6497 Filed 4–5–07; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

**[Public Notice: 5748]**

### TITLE: 30-Day Notice of Proposed Information Collection: DS–5501, Electronic Visa Entry Form, OMB Control Number 1405–0153

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Electronic Diversity Visa Entry Form
- *OMB Control Number:* 1405–0153
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO)
- *Form Number:* DS–5501
- *Respondents:* Aliens entering the Diversity Visa Lottery
- *Estimated Number of Respondents:* 6 million per year
- *Estimated Number of Responses:* 6 million per year
- *Average Hours Per Response:* 30 minutes
- *Total Estimated Burden:* 3 million hours per year
- *Frequency:* Once per entry
- *Obligation to Respond:* Required to Obtain Benefits

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 6, 2007.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–1221 or *lageab@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

*Abstract of proposed collection:*

The Department of State utilizes the Electronic Diversity Visa Lottery (EDV) Entry Form to elicit information necessary to ascertain the applicability of the legal provisions of the diversity program. Primary requirements are that the applicant is from a low admission country and is a high school graduate or has two years of experience in a job that requires two years of training. The individual entrants complete the electronic entry form and then entries are randomly selected for participation in the program.

Dated: March 22, 2007.

**Stephen A. Edson,**

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

[FR Doc. E7–6475 Filed 4–5–07; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF STATE

**[Public Notice 5747]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Mythic Beasts''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Mythic Beasts'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, New York, from on or about May 26, 2007, until on or about January 6, 2008, The Field Museum, Chicago, Illinois, from on or about March 21, 2008, until on or about September 1, 2008, the Fernbank Museum, Atlanta, Georgia, from on or about February 11, 2011, until on or about August 11, 2011 (following exportation and re-importation of the exhibit objects), and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 2, 2007.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7–6477 Filed 4–5–07; 8:45 am]

BILLING CODE 4710–05–P

## SUSQUEHANNA RIVER BASIN COMMISSION

### Notice of Actions Taken at March 14, 2007 Meeting

**AGENCY:** Susquehanna River Basin Commission

**ACTION:** Notice of Commission Actions.

**SUMMARY:** At a public hearing held on March 14, 2007 in Altoona, Pa., the Susquehanna River Basin Commission approved certain water resources projects and rescinded three docket approvals identified in the Supplementary Information section below. In addition, the Commission tabled a show cause enforcement proceeding and rescheduled the proceeding for the June 2007 Commission meeting. In other meeting action, the Commission adopted a 2007 Water Resources Program pursuant to Section 14.2 of the Susquehanna River Basin Compact and approved revisions to its FY 2008 budget, Pub. L. 91–575. For further meeting details, visit the Commission's Web site at *http://www.srbc.net*.

**DATES:** March 14, 2007.

**ADDRESSES:** Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Cairo, General Counsel, telephone: (717) 238–0423; ext. 306; fax: (717) 238–2436; e-mail: rcairo@src.net or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238–0423, ext. 301; fax: (717) 238–2436; e-mail: *ddickey@srbc.net*. Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** At a public hearing on March 14, 2007, the Susquehanna River Basin Commission took the following actions:

#### Public Hearing —Projects Approved

1. Project Sponsor & Facility: Osram Sylvania Products, Inc., Towanda Borough, Bradford County, Pa. Modification of consumptive water use approval (Docket No. 19970502).

2. Project Sponsor & Facility: Conyngham Borough Authority, Conyngham Borough, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.216 mgd.

3. Project Sponsor: The County of Lycoming. Project Facility: Lycoming County Resource Management Services, Brady Township, Lycoming County, Pa. Application for consumptive water use of up to 0.105 mgd.

4. Project Sponsor & Facility: Mount Union Municipal Authority, Wayne Township, Mifflin County, Pa. Application for groundwater withdrawal of up to 0.432 mgd.

5. Project Sponsor & Facility: Commonwealth Environmental Systems, L.P., Foster Township, Schuylkill County, Pa. Application for consumptive water use of up to 0.030 mgd.

6. Project Sponsor & Facility: Shippensburg Borough Authority, Southampton Township, Cumberland County, Pa. Application for groundwater withdrawal of up to 2.000 mgd.

7. Project Sponsor: Lancaster County Solid Waste Management Authority. Project Facility: Frey Farm and Creswell Landfills, Manor Township, Lancaster County, Pa. Modification of consumptive water use approval (Docket No. 20061208).

8. Project Sponsor: Delta Borough. Project Facility: Delta Ridge Subdivision, Peach Bottom Township, York County, Pa. Application for groundwater withdrawal of up to 0./mgd.

#### Public Hearing—Projects Rescinded

1. Project Sponsor & Facility: Frito-Lay, Inc. (Docket No. 20020201), Johnson City, Broome County, NY.

2. Project Sponsor: Corning Incorporated. Project Facility: Erwin Park Photonics (Docket No. 20031002), Town of Erwin, Steuben County, NY.

3. Project Sponsor & Facility: Union Township Municipal Authority (Docket No. 19920701), Union Township, Clearfield County, Pa.

#### Public Hearing—Enforcement Action Tabled

1. Project Sponsor: South Slope Development Corporation (Docket No. 19991103). Project Facility: Song Mountain Ski Resort, Town of Preble, Cortland County, NY.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: March 28, 2007.

**Thomas W. Beauduy,**

*Deputy Director.*

[FR Doc. E7–6472 Filed 4–5–07; 8:45 am]

BILLING CODE 7040–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2006–27393]**

### Agency Information Collection Activities; Request for Comments; Notice of Intent To Survey Motor Carriers Operating Small Passenger-Carrying Commercial Motor Vehicles

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces that its Information Collection Request (ICR) described below has been sent to the Office of Management and Budget (OMB) for review and approval. The ICR describes a proposed collection activity involving all motor carriers who operate small passenger-carrying commercial motor vehicles (CMVs) and its expected cost and burden. A **Federal Register** notice allowing for a 60-day comment period on the ICR was published on December 8, 2006. FMCSA received four comments to this docket, but only one of those comments addressed the information collection process set forth in this notice. This comment was considered during the development of the survey for this information collection.

**DATES:** Comments must be submitted on or before May 7, 2007. OMB must receive your comments by this date to act quickly on the request.

**ADDRESSES:** Send 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:** Mr. Peter Chandler, Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Commercial Passenger Carrier Safety Division, Washington, DC 20590, phone (202) 366–5763, fax (202) 366–3621, e-mail *peter.chandler@dot.gov*. Office hours are from 8 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106–159, 113 Stat. 1748, 1766 (December 9, 1999)] expanded FMCSA's statutory authority to ensure the safe operation of small passenger vehicle carriers operating in long-haul, interstate transportation. In response to this congressional mandate, FMCSA published a final rule in the **Federal Register** (68 FR 47860; August 12, 2003) entitled, ''Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce,'' to require motor carriers operating CMVs, designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce, to comply with parts 391 through 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) when they are directly compensated for such services, and the vehicle is operated beyond a 75 air-mile radius from the driver's normal work-reporting location. As a result of the 2003 rule, these motor carriers are now subject to the same safety requirements as motor coach operators, except for the commercial driver's license (CDL), and controlled substances and alcohol testing regulations. Affected motor carriers were required to be in compliance with such regulations by December 10, 2003 (see 68 FR 61246; date of publication October 27, 2003).

Section 4136 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) [Public Law 109–59, 119 Stat. 1144, 1745 (Aug. 10, 2005)] directed FMCSA to remove the 75 air-mile radius standard set forth in MCSIA. This congressional mandate or change would result in a greater number of motor carriers that operate small passenger-carrying CMVs being subject to the FMCSRs. To effectively inform this segment of the motor carrier passenger industry of the regulatory requirements that they will be subject to, and to assist the agency in administering an effective educational outreach program to this entire industry segment, FMCSA intends to conduct a survey to obtain information about all of these motor passenger carrier operations.

Because certain motor carriers that operate small passenger-carrying CMVs will have new regulatory requirements as a result of the section 4136 provision of SAFETEA–LU, FMCSA wants to learn more about the safety and/or regulatory compliance challenges of this industry segment. There is no motor carrier industry association that is comprised mostly of companies that primarily operate between 9–15 passenger-carrying commercial motor vehicles. This makes obtaining information about this industry segment more difficult and necessitates the assistance of a researcher to obtain information needed by FMCSA to effectively provide outreach to these passenger carriers. FMCSA will obtain a research contractor to collect information about motor carriers with small passenger-carrying CMV operations. The research contractor will collect information through approximately 50 telephone interviews and 8 site visits at places of business. A copy of the telephone survey instrument was placed in the docket. Information obtained from the study will provide insight into the common safety and regulatory compliance challenges facing motor carriers with small passenger-carrying CMV operations. Such information will also be utilized by FMCSA to develop educational outreach initiatives for the affected industry segment. It is appropriate that FMCSA connect with and inform this segment of the motor carrier industry of its regulatory compliance responsibilities before implementing an enforcement program. Any information obtained will help identify specific areas of regulatory compliance that are problematic for this industry segment. In addition, the questions of the telephone survey instrument address safety issues that preliminary research shows are pertinent to motor carriers with small passenger-carrying CMV operations. Useful information about these safety issues could be included in outreach materials for the benefit of the industry. The survey will also obtain needed insight about how to best provide and distribute information to the affected industry segment.

*Title:* Survey of Motor Carriers with Small Passenger-Carrying CMV Operations.

*Type of Information Collection Request:* New one-time survey/information collection.

*Respondents:* For-hire motor carriers that operate between 9–15 passenger-carrying commercial motor vehicles in interstate commerce.

*Estimated Number of Respondents:* 50 motor carriers.

*Estimated Time per Response:* 30 minutes for each telephone survey.

*Frequency of Response:* One time.

*Estimated Total Annual Burden:* 25 hours. The estimated total burden is 25 hours for the information collection based upon an acceptable level of statistical significance and a confidence interval of 13.6 percent [(50 responses × 30 minutes per response)/60 minutes = 25 hours].

We particularly request comments on the necessity and usefulness of the information collection for the proper performance of the functions of FMCSA and specifically the regulatory oversight of small passenger-carrying commercial motor vehicle operations; the accuracy of the estimated burden of collected

information; suggestions to enhance the quality, utility, and clarity of the collected information; and suggestions to minimize the collection burden on respondents, including using automated collection techniques or other forms of information technology.

Issued on: March 29, 2007.

**Rose A. McMurray,**

*Chief Safety Officer, Assistant Administrator.*

[FR Doc. E7–6427 Filed 4–5–07; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–98–4470]**

### Pipeline Safety: Meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of canceled meetings and public workshop.

**SUMMARY:** This notice cancels the Wednesday, April 25 and Thursday, April 26, 2007 meetings of PHMSA's Technical Pipeline Safety Standards Advisory Committee (TPSSC) and Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and a public workshop.

**FOR FURTHER INFORMATION CONTACT:** For additional information regarding this notice contact Cheryl Whetsel at (202) 366–4431, or by e-mail at *cheryl.whetsel@dot.gov*.

**SUPPLEMENTARY INFORMATION:** On February 12, 2007, the THLPSSC discussed a proposal to extend pipeline safety regulations to the unregulated hazardous liquid gathering lines and low stress pipelines, and potential changes to the proposal to address the requirements of the Pipeline Integrity, Protection, Enforcement and Safety Act of 2006. PHMSA expects to incorporate these changes into a supplemental notice of proposed rulemaking (SNPRM) within the next few weeks. PHMSA published a **Federal Register** notice on March 23, 2007 (72 FR 13559) which announced April meetings. The THLPSSC was to consider and vote on the SNPRM. PHMSA has decided an April meeting would not give the THLPSSC sufficient time to review the SNPRM. In addition, the THLPSSC would not have the benefit of viewing the public comments on the SNPRM. PHMSA will schedule a THLPSSC meeting later in the year to consider and vote on this rulemaking proposal.

The other rulemaking item on the April agenda was a TPSSC meeting to consider and vote on a proposal to relax regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems. The proposal is a minor non-controversial change to an existing rulemaking PHMSA will schedule a TPSSC telephone meeting later in the year to consider and vote on this rulemaking proposal.

Lastly, PHMSA continues to evaluate reassessment intervals for gas integrity management programs. PHMSA may reschedule the public workshop canceled by this notice or decide on an alternative way to seek public input.

**Authority:** 49 U.S.C. 60102, 60115.

Issued in Washington, DC on March 30, 2007.

**Jeffrey D. Wiese,**

*Acting Associate Administrator for Pipeline Safety.*

[FR Doc. E7–6426 Filed 4–5–07; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–06–25735; Notice 2]**

### Pipeline Safety: Grant of Waiver; Sabine Pass LNG

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation.

**ACTION:** Grant of waiver; Sabine Pass LNG, L.P.

**SUMMARY:** Sabine Pass LNG, L.P. (SPLNG) requested a waiver of compliance from the Federal pipeline safety regulation that requires liquefied natural gas (LNG) facilities constructed after March 31, 2000 to comply with the National Fire Protection Association's Standard 59A (NFPA 59A), 2001 Edition. The waiver specifically requested permission to use ultrasonic examination as an acceptable alternative non-destructive testing method for welds on LNG tanks.

**SUPPLEMENTARY INFORMATION:**

### Background

SPLNG requested a waiver from compliance of the Federal pipeline safety requirements at 49 CFR 193.2301 for its facility at Cameron Parish, Louisiana. This regulation requires each LNG facility constructed after March 31, 2000 to comply with 49 CFR part 193 and NFPA Standard 59A, 2001 Edition. NFPA Standard 59A, 2001 Edition requires that welded containers designed for not more than 15 pounds per square inch gauge comply with the Eighth Edition, 1990, of American Petroleum Institute Standard 620 (API 620), ''*Design and Construction of Large, Welded, Low-Pressure Storage Tanks (Appendix Q).*'' The Eighth Edition of API 620 requires inspection according to Appendix Q which calls for a full radiographic examination of all vertical and horizontal butt welds associated with the container.

SPLNG is proposing to use the Tenth Edition, 2002, Addendum 1 of the 2004 Edition of API 620 at its Cameron Parish LNG facility. This Tenth Edition allows ultrasonic examination as well as radiography as an acceptable alternative non-destructive testing method. SPLNG proposes to use ultrasonic examination, which consists of full semi-automated and manual ultrasonic examination using shear wave probes. The examination will also consist of a volumetric ultrasonic examination using a combination of creep wave probes and focused angled longitudinal wave probes. To allow ultrasonic examination in accordance with the most recent NFPA Standard 59A, 2006 Edition, a waiver is required.

PHMSA considered SPLNG's waiver request and published a notice in the **Federal Register** inviting interested persons to comment on whether a waiver should be granted (71 FR 56584; September 27, 2006). No comments were received.

The NFPA issued a Tentative Interim Amendment to NFPA Standard 59A, 2006 Edition, effective February 14, 2006 (59A TIA06). This amendment incorporates API 620, Tenth Edition, 2002, Addendum 1, 2004. The Tenth Edition adds ultrasonic examination as an acceptable method of non-destructive examination for welds. The proposed wording of the Tenth Edition 2002, Addendum 1, 2004 of API 620 deletes ''radiographic'' inspection and replaces it with ''complete'' examination and defines ''complete'' examination as radiographic or ultrasonic examination.

*Decision:* PHMSA finds that the use of ultrasonic examination in accordance with NFPA Standard 59A, 2006 Edition and 59A TIA06 is not inconsistent with pipeline safety and achieves an equivalent level of safety. Therefore, SPLNG's request for waiver of compliance with § 193.2301 is granted, subject to the following conditions: (1)

Ultrasonic examinations of welds on metal containers shall comply with section 7.3.1.2 of NFPA Standard 59A, 2006 Edition and 59A TIA06; (2) the owner/operator shall retain all ultrasonic examination records for the life of the facility and these records shall be retained in a manner so they may not be altered; and (3) the interval for verifying the examination of welds against a calibration standard shall be eight hours or less. If the ultrasonic equipment is found to be out of calibration, all previous weld examinations determined by the operator shall be reexamined by ultrasonic equipment within a week.

Issued in Washington, DC on April 2, 2007.

**Jeffrey D. Wiese,**

*Acting Associate Administrator for Pipeline Safety.*

[FR Doc. 07–1706 Filed 4–2–07; 4:52 pm]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–06–25734; Notice 2]**

### Pipeline Safety: Grant of Waiver; Freeport LNG

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); U.S. Department of Transportation

**ACTION:** Grant of Waiver; Freeport LNG.

**SUMMARY:** Freeport LNG (FLNG) requested a waiver of compliance from the Federal pipeline safety regulation that requires liquefied natural gas (LNG) facilities constructed after March 31, 2000 to comply with the National Fire Protection Association's Standard 59A (NFPA 59A), 2001 Edition. The waiver specifically requested permission to use ultrasonic examination as an acceptable alternative non-destructive testing method for welds on LNG tanks.

**SUPPLEMENTARY INFORMATION:**

### Background

FLNG requested a waiver from compliance of the Federal pipeline safety requirements at 49 CFR 193.2301 for its facility at Quintana Terminal, Texas. This regulation requires each LNG facility constructed after March 31, 2000 to comply with 49 CFR part 193 and NFPA Standard 59A, 2001 Edition. NFPA Standard 59A, 2001 Edition requires that welded containers designed for not more than 15 pounds per square inch gauge comply with the Eighth Edition, 1990, of American Petroleum Institute Standard 620 (API 620), ''*Design and Construction of Large, Welded, Low-Pressure Storage Tanks (Appendix Q).*'' The Eighth Edition of API 620 requires inspection according to Appendix Q which calls for a full radiographic examination of all vertical and horizontal butt welds associated with the container.

FLNG proposes to use the Tenth Edition, 2002, Addendum 1 of the 2004 edition of API 620 at its Quintana Terminal LNG facility. The Tenth Edition allows ultrasonic examination as well as radiography as an acceptable alternative non-destructive testing method. FLNG proposes to use ultrasonic examination, which consists of full semi-automated and manual ultrasonic examination using shear wave probes. The examination will also consist of a volumetric ultrasonic examination using a combination of creep wave probes and focused angled longitudinal wave probes. To allow ultrasonic examination in accordance with the most recent NFPA Standard 59A, 2006 Edition, a waiver is required.

PHMSA considered FLNG's waiver request and published a notice in the **Federal Register** inviting interested persons to comment on whether a waiver should be granted (71 FR 56583; September 27, 2006). No comments were received.

The NFPA issued a Tentative Interim Amendment to NFPA Standard 59A, 2006 Edition, effective February 14, 2006 (59A TIA06). The amendment incorporates API 620, Tenth Edition, 2002, Addendum 1, 2004. The Tenth Edition adds ultrasonic examination as an acceptable non-destructive testing method of examination for welds. The proposed wording of the Tenth Edition, Addendum 1, 2004 of API 620 deletes ''radiographic'' inspection and replaces it with ''complete'' examination and defines ''complete'' examination as radiographic or ultrasonic examination.

*Decision:* PHMSA finds that the use of ultrasonic examination in accordance with NFPA Standard 59A, 2006 Edition and 59A TIA06 is not inconsistent with pipeline safety and achieves an equivalent level of safety. Therefore, FLNG's request for waiver of compliance with § 193.2301 is granted, subject to the following conditions: (1) Ultrasonic examinations of welds on metal containers shall comply with section 7.3.1.2 of NFPA Standard 59A, 2006 Edition and 59A TIA06; (2) the owner/operator shall retain all ultrasonic examination records for the life of the facility and these records shall be retained in a manner so they may not be altered; and (3) the interval for verifying the examination of welds against a calibration standard shall be eight hours or less. If the ultrasonic equipment is found to be out of calibration, all previous weld examinations determined by the operator shall be reexamined by ultrasonic equipment within a week.

Issued in Washington, DC on April 2, 2007.

**Jeffrey D. Wiese,**

*Acting Associate Administrator for Pipeline Safety.*

[FR Doc. 07–1705 Filed 4–2–07; 4:52 pm]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35007]**

### Union Pacific Railroad Company-Temporary Trackage Rights Exemption-BNSF Railway Company

Pursuant to a written trackage rights agreement dated March 15, 2007, BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over approximately 2 miles of BNSF's lines extending between Basta, CA (milepost 163.15), and Fullerton, CA (milepost 165.23).

The transaction is scheduled to be consummated on April 27, 2007. The temporary trackage rights are intended to expire on or about August 28, 2007.[1]

The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry.,* Inc.-Lease and Operate, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Any stay petition must

[1] In accordance with the trackage rights agreement, UP indicates that it will utilize its trackage rights from April 27, 2007, through May 19, 2007, and from August 7, 2007, through August 28, 2007.

be filed on or before April 13, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35007, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gabriel S. Meyer, Assistant General Attorney, 1400 Douglas Street, Union Pacific Railroad Company, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 28, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–6217 Filed 4–5–07; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35010]**

### Union Pacific Railroad Company—Temporary Trackage Rights Exemption—Orange County Transportation Authority

Pursuant to a written trackage rights agreement dated March 20, 2007, Orange County Transportation Authority (OCTA) has agreed to grant temporary overhead trackage to Union Pacific Railroad Company (UP) over OCTA's trackage extending between milepost 165.25, Fullerton Junction, CA, and milepost 171.00, CP College, CA, a distance of approximately 5.75 miles.

The transaction is scheduled to be consummated on April 27, 2007. The temporary trackage rights are scheduled to expire on August 28, 2007.[1] The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.–Trackage Rights–BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.–Lease and Operate*, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by April 13, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35010, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Gabriel S. Meyer, Union Pacific Railroad Company, 1400 Douglas St., STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 2, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–6483 Filed 4–5–07; 8:45 am]

**BILLING CODE 4915–01–P**

[1] In accordance with the trackage rights agreement, UP will utilize its trackage rights from April 27, 2007, through May 19, 2007, and from August 7, 2007, through August 28, 2007.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, ''(MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

**DATES:** You should submit written comments by May 7, 2007.

**ADDRESSES:** You should direct all written comments to the Communications Division, Attention: 1557–0184, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information from or a copy of the collection from Mary Gottlieb or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0184), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0184, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** *Title:* (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

*OMB Number:* 1557–0184.

*Form Numbers:* MSD, MSDW, MSD–4, MSD–5, G–FIN, G–FINW.

*Type of Review:* Renewal of a currently approved collection. The collection has not changed. The OCC asks only that OMB approve its revised estimates and extend its approval of the forms.

*Abstract:* This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 and the Government Securities Act of 1986 which require that any national bank that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine which national banks are government and municipal securities broker/dealers and to monitor entry into and exit from government and municipal securities broker/dealer activities by institutions and registered persons. The OCC also uses the information in planning bank examinations.

*Affected Public:* Businesses or other for-profit; individuals.

*Burden Estimates:*

*Estimated Number of Respondents:* 33.

*Estimated Total Annual Responses:* 1,227.

*Estimated Total Annual Burden:* 1,172.75 burden hours.

*Frequency of Response:* On occasion.

*Comments:* A 60-day **Federal Register** notice was published on January 19, 2007 seeking comment on these burden estimates. (72 FR 2592). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 30, 2007.

**Stuart Feldstein,**

*Assistant Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.*

[FR Doc. 07–1707 Filed 4–5–07; 8:45 am]

**BILLING CODE 4810–33–P**

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## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## FEDERAL RESERVE SYSTEM

## FEDERAL DEPOSIT INSURANCE CORPORATION

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## Proposed Agency Information Collection Activities; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Joint notice and request for comment.

**SUMMARY:** The OCC, Board, FDIC and OTS (collectively, the Banking Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed extension, with revision, of the interagency Transfer Agent and Amendment Form, as required by the Paperwork Reduction Act of 1995. OTS seeks to implement an amendment to section 3(a)(34) of the Securities Exchange Act of 1934 (the Act), pursuant to a provision of the Financial Services Regulatory Relief Act of 2006 (FSRRA), enacted on October 13, 2006. This implementation would institute the use of the TA–1 for savings associations intending to engage in transfer agent activities. The Banking Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

**DATES:** Comments must be submitted on or before June 5, 2007.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0124, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect comments by calling (202) 874–5043.

Board: You may submit comments, which should refer to ''FR TA–1, 7100–0099,'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the OMB control number for this information collection in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Transfer Agent Registration and Amendment Form, 3064–0026'' by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@FDIC.gov.* Include ''Transfer Agent Registration and Amendment Form, 3064–0026'' in the subject line of the message.
- *Mail:* Steven F. Hanft (202–898–3907), Clearance Officer, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–NEW (Form TA–1),'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include ''1550–NEW (Form TA–1)'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–NEW (Form TA–1).''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''1550–NEW (Form TA–1).''

*Instructions:* All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** For further information about the proposed information collection discussed in this notice, please contact any of the agency clearance officers whose names appear below.

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The Banking Agencies are proposing to extend for three years, with revision, the uniform interagency Transfer Agent Registration and Amendment Form. The Securities Exchange Act of 1934 (the Act) requires any person acting as a transfer agent to register as such and to amend registration information when it changes.

*Report Title:* Transfer Agent Registration and Amendment Form.

*Form Number:* TA–1.

*Frequency of Response:* On occasion.

*Affected Public:* Business or other for-profit.

*Estimated Time per Response:* 1.25 hours: registration, 10 minutes: amendment.

OCC:

*OMB Number:* 1557–0124.

*Estimated Number of Respondents:* 3 registrations, 10 amendments.

*Estimated Total Annual Burden:* 5 hours.

Board:

*OMB Number:* 7100–0099.

*Estimated Number of Respondents:* 5 registrations, 10 amendments.

*Estimated Total Annual Burden:* 8 hours.

FDIC:

*OMB Number:* 3064–0026.

*Estimated Number of Respondents:* 2 registrations, 13 amendments.

*Estimated Total Annual Burden:* 5 hours.

OTS:

On October 13, 2006, the President signed the FSRRA into law. One of the provisions of the FSRRA contains an amendment to section 3(a)(34) of the Securities Exchange Act of 1934. Section 3(a)(34) of the Act defines ''appropriate regulatory agency'' and includes OTS as an appropriate regulatory agency for certain activities, thus authorizing OTS to collect certain information. Therefore, OTS is seeking OMB approval for this new collection of information.

*OMB Number:* 1550–NEW.

*Estimated Number of Respondents:* 5 registrations, 10 amendments.

*Estimated Total Annual Burden:* 8 hours.

## General Description of Reports

This information collection is mandatory: Sections 17A(c), 17(a)(3), and 23(a) of the Act, as amended (15 U.S.C. 78q–1(c), 78q(a)(3), and 78w(a)) (OCC, Board, FDIC, and OTS). Additionally, the Federal Reserve's Regulation H (section 208.31(a)) and Regulation Y (section 225.4(d)), as well as part 341.3 of the FDIC's Rules and Regulations implement the provisions of the Act. The registrations are public filings and are not considered confidential.

## Abstract

Section 17A(c) of the Act requires all transfer agents for securities registered under section 12 of the Act to register ''by filing with the appropriate regulatory agency * * * an application for registration in such form and containing such information and documents * * * as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section.'' In general, an entity performing transfer agent functions for a security is required to register if the security is registered on a national securities exchange and if the issuer has total assets of $10 million or more and a class of equity security held of record by 500 or more persons.

## Current Actions

Currently, the FR TA–1 instructions direct respondents who are submitting amended data to complete the entire reporting form. The Banking Agencies propose to revise the instructions to state that respondents who are filing amended data would be required to complete questions 1, 2, and 3 (appropriate regulatory agency, filing status, and full name of registrant organization, respectively) and, additionally, only those data items that are inaccurate, incomplete, or misleading. This would make filing an amended TA–1 easier for respondents and better highlight the data that has been changed.

OTS seeks OMB approval to institute use of the TA–1 for savings associations intending to engage in transfer agent activities.

## Request for Comment

The Agencies invite comment on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the Agencies. Unless otherwise afforded confidential treatment pursuant to Federal law, all comments will become a matter of public record.

Dated: March 16, 2007.

**Stuart E. Feldstein,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, April 2, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 23rd day of March, 2007.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: March 29, 2007.

**Deborah Dakin,**

*Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.*

[FR Doc. 07–1708 Filed 4–5–07; 8:45 am]

**BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an extension of OMB approval of the information collection titled, ''Disclosure and Reporting of CRA-Related Agreements (12 CFR part 35).'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

**DATES:** Comments must be submitted on or before May 7, 2007.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0219, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0219, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disclosure and Reporting of CRA-Related Agreements (12 CFR Part 35).

*OMB Number:* 1557–0219.

*Type of Review:* Extension of a currently approved collection.

*Description:* This submission covers an existing regulation and involves no change to the regulation, the information collection requirements, or the burden estimates. The OCC requests only that OMB extend its approval of the information collection.

National banks and their affiliates (hereinafter referred to collectively as national banks) occasionally enter into agreements with nongovernmental entities or persons (NGEPs) that are related to national banks' Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act) requires disclosure of certain of these agreements, and imposes reporting requirements on national banks and other insured depository institutions (IDIs), their affiliates, and NGEPs. 12 U.S.C. 1831y. As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of Thrift Supervision issued regulations to implement these disclosure and reporting requirements. The reporting provisions of these regulations constitute collections of information under the Paperwork Reduction Act (PRA). The regulation issued by the OCC is codified at 12 CFR 35; the collections of information contained in that regulation are known as ''CRA Sunshine.''

Section 48 of the FDI Act applies to written agreements that: (1) are made in fulfillment of the CRA, (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an IDI or affiliate of an IDI and a NGEP. 12 U.S.C. 1831y(e).

The parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt and use of funds or other resources under the agreement. The collections of information in CRA Sunshine implement these statutorily mandated disclosure and reporting requirements. The parties to the agreement may request confidential treatment of proprietary and confidential information in an agreement or annual report. 12 CFR 35.8. 12 U.S.C. 1831y(a)–(c).

The information collections are found in 12 CFR 35.4(b); 35.6(b)(1); 35.6(c)(1); 35.6(d)(1)(i) and (ii); 35.6(d)(2); 35.7(b); and 35.7(f)(2)(ii).

*Affected Public:* Individuals; Businesses or other for-profit.

*Burden Estimates:*

*Estimated Number of Respondents:* 362.

*Estimated Total Annual Responses:* 2,813.

*Estimated Total Annual Burden:* 3,899 hours.

*Frequency of Response:* On occasion.

*Comments:* A 60-day **Federal Register** notice was issued on January 16, 2007 (72 FR 1802). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and cost of operation, maintenance, and purchase of services to provide information.

Dated: March 30, 2003.

**Stuart Feldstein,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. E7–6419 Filed 4–5–07; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 970

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 970, Application To Use LIFO Inventory Method.

**DATES:** Written comments should be received on or before June 5, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application To Use LIFO Inventory Method.

*OMB Number:* 1545–0042.

*Form Number:* Form 970.

*Abstract:* Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the last-in first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individual or households.

*Estimated Number of Respondents:* 2000.

*Estimated Time Per Respondent:* 12 hours, 24 minutes.

*Estimated Total Annual Burden Hours:* 24,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2007.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E7–6397 Filed 4–5–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–INT

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–INT, Interest Income.

**DATES:** Written comments should be received on or before June 5, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Interest Income.

*OMB Number:* 1545–0112.

*Form Number:* 1099–INT.

*Abstract:* Form 1099–INT is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the recipient has included the proper amount of interest on his or her income tax return.

*Current Actions:* Two lines have been added to the form since the last submission for approval.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, Federal Government, individuals or households, and not-for-profit institutions.

*Estimated Number of Responses:* 275,797,664.

*Estimated Time Per Response:* 14 minutes.

*Estimated Total Annual Burden Hours:* 63,223,463.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 30, 2007.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E7–6400 Filed 4–5–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 2007–19

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2007–19, Statute of Limitations on Assessment Concerning Certain Individuals Filing Income Tax Returns With the U.S. Virgin Islands.

**DATES:** Written comments should be received on or before June 5, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Statute of Limitations on Assessment Concerning Certain Individuals Filing Income Tax Returns With the U.S. Virgin Islands.

*OMB Number:* 1545–2063.

*Revenue Procedure Number:* Notice 2007–19.

*Abstract:* Notice provides interim guidance, pending the issuance of regulations, concerning the statute of limitations on assessment for the U.S. income tax liability, if any, of U.S. citizens or resident aliens claiming to be bona fide residents of the U.S. Virgin Islands (USVI). In addition, notice provides new information reporting rules for certain taxpayers claiming to be bona fide residents of the USVI.

*Current Actions:* There are no changes being made to the Notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 8,500.

*Estimated Time Per Respondent:* 5 Hours.

*Estimated Total Annual Burden Hours:* 42,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2007.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E7–6401 Filed 4–5–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8866

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8866, Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

**DATES:** Written comments should be received on or before June 5, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala

at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

*OMB Number:* 1545–1622.

*Form Number:* Form 8866.

*Abstract:* Taxpayers depreciating property under the income forecast method and placed in service after September 13, 1995, must use Form 8866 to compute and report interest due or to be refunded under Internal Revenue Code 167(g)(2). The Internal Revenue Service uses the information on Form 8866 to determine if the interest has been figured correctly.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 3,300.

*Estimated Time Per Respondent:* 13 hours, 22 minutes.

*Estimated Total Annual Burden Hours:* 44,121.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2007.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E7–6402 Filed 4–5–07; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[TD 9312]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning a temporary regulation, (TD 9312), Section 181—Deduction for Film and Television Production Costs.

**DATES:** Written comments should be received on or before June 5, 2007 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Section 181—Deduction for Film and Television Production Costs.

*OMB Number:* 1545–2059.

*Regulation Project Number:* TD 9312.

*Abstract:* This temporary regulation provides rules for electing to claim a deduction for certain costs of producing a qualifying film or television production, and for substantiating that the production qualifies for the deduction. The temporary regulation provides the time and manner for a taxpayer to submit certain information to make the election and to claim this deduction.

*Current Actions:* There are no changes being made to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 3 hours.

*Estimated Total Annual Burden Hours:* 1,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2007.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E7–6403 Filed 4–5–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the sale and issue of Marketable Book-Entry securities.

**DATES:** Written comments should be received on or before June 6, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Treasury Security Commercial Tender Form.

*OMB Number:* 1535–0112.

*Form Number:* Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds.

*Abstract:* The information is requested to process the tenders and to ensure compliance with regulations.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals, business or other for profit, or not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 2, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–6364 Filed 4–5–07; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Direct Deposit Sign Up Form.

**DATES:** Written comments should be received on or before June 6, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Direct Deposit Sign Up Form.

*OMB Number:* 1535–0128.

*Form Number:* PD F 5396.

*Abstract:* The information is requested to process payment data to a financial institution.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 18,000

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 3,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 2, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–6423 Filed 4–5–07; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Redemption of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness Demand Deposit.

**DATES:** Written comments should be received on or before June 6, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Redemption of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness Demand Deposit.

*OMB Number:* 1535–0083.

*Form Number:* PD F 5238.

*Abstract:* The information is requested to process redemption for State and Local Government entities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State or Local Government.

*Estimated Number of Respondents:* 69.

*Estimated Time Per Respondent:* 3 minutes.

*Estimated Total Annual Burden Hours:* 3.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 2, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–6453 Filed 4–5–07; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription for purchase of Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.

**DATES:** Written comments should be received on or before June 6, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5312, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Subscription for Purchase of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

*OMB Number:* 1535–0082.

*Form Number:* PD F 5237.

*Abstract:* The information is requested to establish an account for State and Local Government entities wishing to purchase Treasury Securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State or Local Government.

*Estimated Number of Respondents:* 64.

*Estimated Time Per Respondent:* 8 minutes.

*Estimated Total Annual Burden Hours:* 9.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 2, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–6454 Filed 4–5–07; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of amendment to system of records.

**SUMMARY:** As required by the Privacy Act of 1974 (5 U.S.C. 552a(e) notice is hereby given that the Department of Veterans Affairs is amending the system of records currently entitled ''Veterans, Dependents of Veterans, and VA Beneficiary Survey Records (43VA008)'' as set forth in the **Federal Register** 65 FR 61022–61025. VA is amending the system by revising the System Name, Categories of Individuals on Whom Records are Maintained in the System; Categories of Records in the System; Authority for Maintenance of the System, Routine Uses of Records Maintained in the System, including Categories of Users and the Purpose of Such Uses, the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System; System Manager(s); and Record Source Categories. VA is publishing the system notice in its entirety.

**DATES:** Comments on this new system of records must be received no later than May 7, 2007. If no public comment is received, the new system of records will become effective May 7, 2007.

**ADDRESSES:** Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) by May 7, 2007. Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System.

**FOR FURTHER INFORMATION CONTACT:** Christine Elnitsky, Senior Policy Analyst, Policy Analysis Service, (008A1), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9179.

**SUPPLEMENTARY INFORMATION:**

## I. Description of Proposed System of Records

The system name is changed from ''Veterans, Dependents of Veterans, and VA Beneficiary Survey Records-VA'' to ''Veterans, Service Members, Family Members, and VA Beneficiary Survey Records'' to be consistent with Congress' intent (as reflected in Pub. L. 108–454, sections 211 and 805) that VA also include service members and families of service members in surveys conducted by VA. The term ''Service Members'' includes active duty Armed Forces and members of the National Guard and Reserve Force, regardless of whether they are on active duty.

The category entitled ''Categories of individuals on whom records are maintained in the system'' is amended to more accurately reflect the population from which VA may conduct surveys, to include service members and families of service members. VA beneficiaries, such as a spouse from a previous marriage, have and continue to be an included category of individuals.

The records covered by the heading entitled ''Categories of records maintained in the system'' are clarified by providing more details concerning the records contained in some of the categories of records described in the current system of records notice. VA is not adding any new categories of records maintained.

VA is amending the authority for maintenance of records in this system to more precisely state that authority and to include statutory authority enacted since the last publication of this system notice. Previously, VA cited all of Public Law 103–62 as authority to maintain these records when only the portion codified at 5 U.S.C. section 306 is applicable. The reference to planning in the current and proposed Purposes for this system of records includes (and included) use in VA strategic planning under section 306. VA also is adding sections 211 and 805 of Public Law 108–454 as authority for maintenance of the records in this system of records.

VA is amending the Policies and Practices for Storing, Retrieving Accessing, Retaining and Disposing of Records in the System as follows. VA is amending the ''Retrievability'' and ''Safeguards'' paragraphs to reflect requirements for protecting the confidentiality of protected health information obtained from the Veterans Health Administration (VHA) in compliance with requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules. The amendments to the ''Safeguards'' paragraph also more fully describe security procedures for protecting the records, as well as procedures adopted since the last publication. VA is amending the retention and disposal paragraph to more fully describe the statutory requirement.

VA is amending the system manager paragraph to reflect the change in the agency official responsible for maintaining the system of records.

The Department has made minor edits to the System Notice to use plain language, and for grammar and clarity purposes, including changes to routine uses. These changes are not, and are not intended to be, substantive, and consequently, are not further discussed or enumerated.

## II. Proposed Amendments to Routine Use Disclosures of Data in the System

The Agency is adding a preliminary statement before the routine uses clarifying that the routine use disclosure statements in this system of records do not provide authority for VA to disclose individually-identifiable health information protected by 38 U.S.C. 7332, the HIPAA Privacy Rule. This means you must have disclosure authority under 38 U.S.C. 7332, HIPAA, or both, where applicable, before disclosure under any routine use for data covered by these provisions. Further, routine uses are amended to provide consistency with the standards defined by Department of Health and Human Services (HHS) under HIPAA.

Routine use number 1 and 2 are subsumed in the new routine use number 4. The combined routine use permits all disclosures previously authorized under the two previous routine uses.

Routine use number 3 is renumbered as routine use number 1 and is clarified as to the scope of records that can be disclosed.

Routine use number 4 is renumbered as routine use number 2 and is amended to clarify the persons who may receive records under this routine use. VA retains ownership of all individually-identifiable records provided under this routine use or created by the recipient pursuant to the agreement underlying this routine use. Recipients of records under this routine use shall be required to comply with the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m). OPP will ensure the appropriateness of disclosure of health information to contractors. Safeguards are to be provided in the underlying contract or agreement prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract or agreement.

Routine use number 3 is a new routine use. The routine use states when OPP, on its own initiative, may disclose individually-identifiable information to law enforcement entities for investigations.

Routine use number 4 is a new routine use. It provides authority for VA to provide information to other Federal agencies for statutorily permitted or required research and analyses. The routine use also permits VA to disclose limited individually-identified information to another Federal agency where that agency needs the information in order to locate, identify and provide information to OPP for OPP's purposes provided in this system of records notice. For example, this disclosure would include use in statistical studies such as describing VA's role in total benefit coverage and forecasting future demand for VA benefits or services or to receive summary business data to study the growth of veteran-owned businesses by area and industry. The privacy requirements and information use safeguards as required by OPP when records are shared with other Federal agencies for their use or for OPP information matching needs are specified.

Routine use number 5 is a new routine use. The routine use provides that VA may disclose individually-identifiable information about a constituent of a Member of Congress to that Member or his or her staff when the Member is acting on behalf of the constituent at the constituent's request.

Routine use number 6 is a new routine use that states when the Department may disclose records to the Department of Justice or may itself disclose records in litigation involving the United States. In determining whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update'', currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

Routine use number 7 is a new routine use that states the circumstances, and to whom, VA may disclose records in order to respond to, and minimize possible harm to individuals as a result of a data breach. This routine use is promulgated in order to meet VA's duties under 38 U.S.C. 5724 and the Privacy Act.

## III. Compatibility of the Proposed Routine Uses

The Privacy act permits VA to disclose information about individuals without their authorization for routine uses when the information will be used for purposes that are compatible with the purposes for which VA collected the information. In all the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMBN) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: March 22, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

### 43VA008

#### SYSTEM NAME:

Veterans, Service Members, Family Members, and VA Beneficiary Survey Records.

#### SYSTEM LOCATION:

Computerized records will be maintained at the following computer site locations: VA Austin Automation Center, 1615 Woodward Street, Austin, Texas 78722; VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420; or with private contractors acting as agents of the VA. Paper records are stored at the Washington National Records Center (WNRC) or with private contractors acting as agents of the VA.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Veterans,
(2) Family members of veterans,
(3) Military service members,
(4) Family members of service members, and
(5) Other VA beneficiaries.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system may include:

1. Personal identifiers (e.g., respondents' names, addresses, phone numbers, social security numbers, employer identification numbers);
2. Demographic and socioeconomic characteristics (e.g., date of birth, sex, race/ethnicity, education, marital status, employment and earnings, financial information, business ownership information);
3. Military service information (e.g., military occupational specialties, periods of active duty, branch of service including National Guard or Reserves, date of separation, rank);
4. Health status information (e.g., diagnostic, health care utilization, cost, and third-party health plan information);
5. Benefit and service information (e.g., data on transition assistance services, VA medical and other benefit eligibility, awareness, knowledge, understanding, and use; data on access and barriers to VA benefits or services; data about satisfaction with VA outreach, benefits, or services);
6. The records may also include information about DoD military personnel from DoD files (e.g., utilization files that contain inpatient and outpatient medical records, and eligibility files from the Defense Eligibility Enrollment Reporting System (DEERS));
7. The records may include information on Medicare beneficiaries from Health Care Financing Administration (HCFA) databases (e.g., Denominator file identifies the population being studied; Standard Analytical files on inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment; and Group and other Health Plans).

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 306, 38 U.S.C. 527, and Sections 211 and 805 of Public Law 108–454.

#### PURPOSE(S):

The purpose of this system of records is to collect data about the characteristics of America's veteran, service member, family member, and beneficiary population through surveys that may be augmented with information from several existing VA systems of records and with information from non-VA sources to:

1. Conduct statistical studies and analyses relevant to VA programs and services.
2. Plan and improve services provided;
3. Decide about VA policies, programs, and services;
4. Study the VA's role in the use of VA and non-VA benefits and services; and
5. Study the relationship between the use of VA benefits and services and the use of related benefits and services from non-VA sources. These types of studies are needed for VA to forecast future demand for VA benefits and services.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, i.e., individually identifiable health information, and 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism, or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Any system records may be disclosed to the National Archives and Records Administration (NARA), and General Services Administration (GSA) for records management inspections conducted under the authority of 44 United States Code.
2. Any system records may be disclosed to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement for the performance of the services identified in the contract or agreement. The person performing the agreement or contract (or employees of the person) also may disclose records covered by the contract or agreement to any secondary entity or individual to perform an activity necessary to provide to VA the service identified in the contract or agreement as permitted under the contract or agreement.
3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their

dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. Any system records may be disclosed to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and OPP has determined prior to the disclosure that OPP data handling requirements are satisfied. OPP may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for OPP to use for the purposes stated for this system of records.

5. Any system records may be disclosed 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.

6. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

7. VA may, on its own initiative, disclose information when VA reasonably believes that there may have been a data breach with respect to information in the system such that the confidentiality or integrity of information in the system of records may have been compromised to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed data breach and prevent, minimize, or remedy such harm, including conduct of any risk analysis, or provision of credit protection services as provided in 38 U.S.C. 5724.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM**

**STORAGE:**

VA sensitive information includes health information that is stored on electronic media, laser optical media, on a segregated secure server or in paper form. Electronic media, or laser optical media data are kept locked in a safe when not in immediate use. The data is located in a combination-locked safe which is secured inside a key-accessed room at the U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Information stored on paper is kept locked in file cabinets when not in immediate use. Databases are temporarily placed on a secured server inside a restricted network area for data match purposes only. Information that resides on a segregated server is kept behind cipher locked doors with limited access. Requestors of OPP stored health information within VA, or from external individuals, contractors, organizations, and/or agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection and comply with current VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to VA Directive 6504.

**RETRIEVABILITY:**

Health care information is kept separate from individual identifiers. Unique codes are assigned to individual health information. A codebook for decoding is stored in a safe for name, social security number or other assigned identifiers of the individuals on whom they are maintained. These records may be retrieved by name, address, social security number, date of birth, military service number, claim or file number, DoD's identification numbers, or other personal identifiers.

**SAFEGUARDS:**

1. This list of safeguards furnished in this System of Record is not an exclusive list of measures that has been, or will be, taken to protect individually-identifiable information. HIPAA guidelines for protecting health information will be followed by adopting health care industry best practices in order to provide adequate safeguards. Further, VA policy directives that specify the standards that will be applied to protect health information will be reviewed by VA staff and contractors through mandatory data privacy and security training.

2. Access to data storage areas is restricted to authorized VA employee or contract staff who have been cleared to work by the VA Office of Security and Law Enforcement. Health information file areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel.

3. Access to health information provided by the Veterans Health Administration (VHA) pursuant to a Business Associate Agreement (BAA) is restricted to those OPP employees and contractors who have a need for the information in the performance of their official duties. As a general rule, full sets of health care information are not provided for use unless authorized by the Assistant Secretary. File extracts provided for specific official uses will be limited to contain only the information fields needed for the analysis. Data used for analyses will have individual identifying characteristics removed whenever possible.

4. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Health information files containing unique identifiers such as social security numbers are encrypted to NIST verified FIPS 140–2 standard or higher for storage, transport, or transmission. All files stored or transmitted on laptops, workstations, data storage devices and media are encrypted. Files are kept encrypted at all times except when data is in immediate use. These methods are applied in accordance with HIPAA regulations [45 CFR 164.514] and VA Directive 6504.

5. Contractors and their subcontractors are required to maintain the same level of security as VA staff for health care information that has been disclosed to them. Any data disclosed to

a contractor or subcontractor to perform authorized analyses requires the use of Data Use Agreements, Non-Disclosure Statements and Business Associates Agreements (BAA's) to protect health information. Unless explicitly authorized in writing by the VA, sensitive or protected data made available to the contractor and subcontractors shall not be divulged or made known in any manner to any person. Other federal or state agencies requesting health care information need to provide Data Use Agreements to protect data.

6. OPP's work area is accessed for business-only needs. The data is stored in a combination-protected safe which is secured inside a limited access room. Direct access to the safe is controlled by select individuals who possess background security clearances. Only a few employees with strict business needs or ''need-to-know'' access and completed background checks will ever handle the data once it is removed from the safe for data match purposes.

7. Data matches are conducted on a secured server which is housed in a restricted access network area with appropriate locking devices. Access to such records are controlled by three measures: The application of a VA security identification card coded with special permissions network area's key pad; the proper input of a series of individually-unique passwords/codes by a recognized user; and the entrance of those select individuals for the performance of their official information technology-related duties.

8. Access to Automated Data Processing (ADP) files is controlled by using an individually unique password entered in combination with an individually unique user identification code.

9. Access to VA facilities where identification codes, passwords, security profiles and possible security violations are maintained is controlled at all hours by the Federal Protective Service, VA, or other security personnel and security access control devices.

10. Public use files prepared for purposes of research and analysis are purged of personal identifiers.

11. Paper records, when they exist, are maintained in a locked room at the WNRC. The Federal Protective Service protects paper records from unauthorized access.

**RETENTION AND DISPOSAL:**

Records are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States and the National Archives and Records Administration (NARA) and published in Agency Records Control Schedules. If the Archivist has not approved disposition authority for any records covered by the system notice, the System Manager will take immediate action to have the disposition of records in the system reviewed in accordance with VA Handbook 6300.1, Records Management Procedures. The records may not be destroyed until VA obtains an approved records disposition authority. See Records Control Schedule (RCS) 10–1 for further guidance. OPP destroys electronic files when no longer needed for administrative, legal, audit, or other operational purposes. In accordance with title 36 CFR, Section 1234.34, Destruction of Electronic Records, ''electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules.''

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Director, Policy Analysis Service (008A1), 810 Vermont Avenue, NW., Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

An individual who wants to determine whether the Director, Policy Analysis Service (008A1) is maintaining a record under the individual's name or other personal identifier or wants to determine the content of such records must submit a written request to the Director, Program Analysis Service (008A1). The individual seeking this information must prove his or her identity and provide the name of the survey in question, approximate date of the survey, social security number, full name, and date of birth, telephone number, and return address. All inquiries must reasonably identify the health care information involved and the approximate date that medical care was provided.

**RECORDS ACCESS PROCEDURES:**

Individual seeking information regarding access to and contesting of records maintained by the Office of Policy and Planning under his or her name or other personal identifier may write the System Manager named above and specify the information being requested or contested.

**CONTESTING RECORD PROCEDURES:**

(See Records Access Procedures.)

**RECORDS SOURCE CATEGORIES:**

Information in this system of records is obtained from survey questionnaire data provided by veterans, veteran family members, military service members, families of service members, or VA beneficiaries in a survey sample and from veterans, family members, military service members, or beneficiaries on specific VA benefit rolls. Information may also be obtained from the Patient Medical Records System (24VA19), the Patient Fee Basis Medical and Pharmacy Records (23VA19); Veterans and Beneficiaries Identification and Records Location Subsystem (38VA23); Compensation, Pension, Education, and Rehabilitation Records (58VA21/22); Health Care Eligibility Center Records (89VA19); DoD utilization files and DEERS files; and HCFA Denominator file or its successor, Standard Analytical files (inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment) and Group Health Plan, and other public or private health provider, federal agency, or insurance programs and plans.

[FR Doc. E7–6233 Filed 4–5–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
April 6, 2007

# Part II

# Department of Transportation

## National Highway Traffic Safety Administration

## 49 CFR Parts 571 and 585

## Federal Motor Vehicle Safety Standards; Electronic Stability Control Systems; Controls and Displays; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 571 and 585**

**[Docket No. NHTSA–2007–27662]**

**RIN 2127–AJ77**

# Federal Motor Vehicle Safety Standards; Electronic Stability Control Systems; Controls and Displays

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** As part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes, this document establishes a new Federal motor vehicle safety standard (FMVSS) No. 126 to require electronic stability control (ESC) systems on passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 Kg (10,000 pounds) or less. ESC systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out).

Preventing single-vehicle loss-of-control crashes is the most effective way to reduce deaths resulting from rollover crashes. This is because most loss-of-control crashes culminate in the vehicle leaving the roadway, which dramatically increases the probability of a rollover. Based on the best available data, drawn from crash data studies, NHTSA estimates that the installation of ESC will reduce single-vehicle crashes of passenger cars by 34 percent and single vehicle crashes of sport utility vehicles (SUVs) by 59 percent, with a much greater reduction of rollover crashes. NHTSA estimates that ESC has the potential to prevent 71 percent of the passenger car rollovers and 84 percent of the SUV rollovers that would otherwise occur in single-vehicle crashes.

NHTSA estimates that ESC would save 5,300 to 9,600 lives and prevent 156,000 to 238,000 injuries in all types of crashes annually once all light vehicles on the road are equipped with ESC systems. The agency further anticipates that ESC systems would substantially reduce (by 4,200 to 5,500) the more than 10,000 deaths each year on American roads resulting from rollover crashes.

Manufacturers equipped about 29 percent of model year (MY) 2006 light vehicles sold in the U.S. with ESC, and intend to increase the percentage to 71 percent by MY 2011. This rule requires installation of ESC in 100 percent of light vehicles by MY 2012 (with exceptions for some vehicles manufactured in stages or by small volume manufacturers). Once all light vehicles in the fleet have ESC, of the overall projected annual 5,300 to 9,600 highway deaths and 156,000 to 238,000 injuries prevented by stability control systems installed either voluntarily or under this rulemaking, we would attribute 1,547 to 2,534 prevented fatalities (including 1,171 to 1,465 involving rollover) to this rulemaking, in addition to the prevention of 46,896 to 65,801 injuries by increasing the percentage of light vehicles with ESC from 71 percent to 100 percent.

**DATES:** *Effective Date:* This final rule is effective June 5, 2007. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 5, 2007.

*Compliance Date:* Consistent with the phase-in commencing September 1, 2008, all new light vehicles must be equipped with an ESC system that meets the requirements of the standard by September 1, 2011, with the following exceptions. Vehicle manufacturers need not meet the standard's requirements for control and display requirements for the ESC malfunction indicator telltale and ''ESC Off'' switch and telltale (if provided) until September 1, 2011 (*i.e.*, at the end of the phase-in), and vehicles produced by final-stage manufacturers and alterers must be equipped with a compliant ESC system (including the control and display requirements) by September 1, 2012. However, manufacturers may voluntarily certify vehicles to FMVSS No. 126 and earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, that are manufactured between June 5, 2007, and the conclusion of the phase-in.

*Petitions for Reconsideration:* If you wish to submit a petition for reconsideration of this rule, your petition must be received by May 21, 2007.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VI; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. Patrick Boyd, Office of Crash Avoidance Standards (Telephone: 202–366–6346) (Fax: 202–366–7002).

For legal issues, you may call Mr. Eric Stas, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Executive Summary
A. Requirements of the Final Rule
B. Lead Time and Phase-in
C. Differences Between the Final Rule and the Notice of Proposed Rulemaking
D. Impacts of ESC and of the Final Rule
II. Background
A. Overview of the Safety Problem
B. The Agency's Comprehensive Response to Rollover
C. Congressional Mandate Under Section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005
D. Electronic Stability Control as a Countermeasure to Address Single-Vehicle Crashes and Rollovers
III. September 2006 Notice of Proposed Rulemaking (NPRM) and Public Comments
A. The NPRM
B. Summary of the Public Comments on the NPRM
IV. The Final Rule and Response to Public Comments
A. Summary of the Requirements
B. Lead Time and Phase-in
C. Response to Public Comments by Issue
*Major Issues*
1. Approach of the ESC NPRM
(a) ESC Mandate vs. ESC Standardization
(b) ESC as Part of a Comprehensive Rollover Safety Program
(c) Need for Common Terminology
2. The Definition of ''ESC System'' as the Basis of the Standard
3. Stringency of the Standard
4. Understeer Requirements
5. Lateral Responsiveness Criteria
6. Definition of ''ESC System'' and Required Equipment
(a) Clarification of Performance Expectations
(b) Clarification of Threshold Speed
(c) Estimation of Sideslip—Request to Add Derivative
(d) Request for Alternate Transducers
(e) Interaction with Other Vehicle Systems
(f) ESC Operation in Reverse
7. ESC Performance Requirements
(a) Definition for ''Lateral Acceleration''
(b) Lateral Displacement Calculation
(c) Yaw Rate Calculation

(d) Temperature and Pavement Specifications
(e) Data Processing Issues
(i) Determination of Beginning of Steering
(ii) Determination of End of Steering
(iii) Removing Offsets
(iv) Use of Interpolation
(v) Method for Determining Peak Steering Wheel Angle
(vi) Need for a Common Data Processing Kernel
(f) ESC Initialization Period
(g) ESC Calibration
Other Issues
8. ESC Malfunction Detection Requirements
(a) Types of Malfunctions to be Detected
(b) Practicability Problems with Malfunction Detection
(c) Monitoring When System is Off
(d) Minimum Performance Level
9. ESC Telltale Requirements
(a) ESC Telltale
(i) Telltale Symbol Text Enhancements
(ii) Telltale Symbol Alternative: Substitute Text
(iii) Waiver of Yellow Color Requirement for ESC Telltale When Message/Information Center is Used
(iv) Telltale Illumination Strategy
(v) Telltale Extinguishment
(vi) Telltale Location
(vii) Use of ESC Malfunction Telltale to Indicate Malfunctions of Related Systems/Functions
(b) ''ESC Off'' Indication
(i) ''ESC Off'' Symbol Alternative: Use of Text
(ii) Waiver of Yellow Color Requirement When ''ESC Off'' is Indicated Via Message/Information Center Text
(iii) ''ESC Off'' Telltale Clarification
(iv) ''ESC Off'' Telltale Strategy
(v) Use of Two-Part Telltales
(vi) Conditions for Illumination of ''ESC Off'' Telltale: Speed
(vii) Conditions for Illumination of ''ESC Off'' Telltale: Direction
(c) Alerting the Driver of ESC Activation
(i) Visual and Auditory Indications of ESC Activation
(ii) Flashing Telltales as Activation Indication of Intervention by Related Systems/Functions
(d) Bulb Check
(i) Waiver of Bulb Check for Message/Information Centers
(ii) Clarification Regarding Bulb Check
10. System Disablement and the ''ESC Off'' Control
(a) Provision of an ''ESC Off'' Control
(b) Switch for Complete ESC Deactivation
(c) ESC Operation After Malfunction and ''ESC Off'' Control Override
(d) Default to ''ESC On'' Status
(e) Operation of Vehicle in 4WD Low Modes
(f) ''ESC Off'' Control Requirements
(i) Labeling of the ''ESC Off'' Control
(ii) Location of the ''ESC Off'' Control
11. Test Procedures
(a) Accuracy Requirements
(b) Tolerances
(c) Location of Lateral Accelerometer
(d) Calculation of Lateral Displacement
(e) Maximum Steering Angle
(f) Vehicle Test Weight
(g) Data Filtering
(h) Outriggers
(i) Ambient Temperature Range
(j) Brake Temperatures
(k) Wind Speed
(l) Rounding of Steering Wheel Angle at 0.3 g
(m) Vehicle Speed Specification for the Slowly Increasing Steer Test
(n) Alternative Test Procedures
(o) Representativeness of Real World Conditions
12. Lead Time and Phase-in
(a) Lead Time for ESC Telltale(s)
(b) Phase-in Schedule
13. Impacts on the Aftermarket
(a) System Adaptability and Sharing ESC Information
(b) ''Make Inoperative'' Prohibition
(c) Pass-through Certification
14. Compliance with Relevant Legal Requirements
(a) Regulatory Flexibility Act
(b) Executive Orders 12866 and 13258
(c) Vehicle Safety Act
15. ESC Outreach Efforts
(a) ESC Test Procedures Workshop
(b) Public Information Campaign
16. Miscellaneous Issues
(a) Linking Brake Light Illumination to ESC Activation
(b) Vehicles with Dual Wheels on the Rear Axle
(c) ESC Operation with Towed Trailers
(d) Wheelchair-Accessible Vehicles
V. Benefits and Costs
A. Summary
B. ESC Benefits
C. ESC Costs
VI. Regulatory Analyses and Notices
Appendix: Technical Explanation in Response to Comments on Understeer

## I. Executive Summary

As part of a comprehensive plan [1] that seeks to reduce the serious risk of rollover crashes and the risk of death and serious injury in those crashes, and that includes a number of complementary rulemaking actions, this rule establishes Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems*, which requires passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses that have a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less to be equipped with an ESC system that meets the requirements of the standard. ESC systems use automatic, computer-controlled braking of individual wheels to assist the driver in maintaining control (and the vehicle's intended heading) in situations where the vehicle is beginning to lose directional stability (*e.g.*, where the driver misjudges the severity of a curve or over-corrects in an emergency situation). In such situations (which occur with considerable frequency), intervention by the ESC system can assist the driver in preventing the vehicle from leaving the roadway, thereby preventing fatalities and injuries associated with crashes involving vehicle rollover or collision with various objects (*e.g.*, trees, highway infrastructure, other vehicles).

Based upon current estimates regarding the effectiveness of ESC systems, we believe that an ESC standard could save thousands of lives each year, providing potentially the greatest safety benefits produced by any safety device since the introduction of seat belts. The following discussion highlights the research and regulatory efforts that have culminated in this safety standard.

Since the early 1990's, NHTSA has been actively engaged in finding ways to address the problem of vehicle rollover, because crashes involving rollover are responsible for a disproportionate number of fatalities and serious injuries (over 10,000 of the 33,000 fatalities of vehicle occupants in 2004). Although various options were explored, the agency ultimately chose to add a rollover resistance component to its New Car Assessment Program (NCAP) consumer information program in 2001. In response to NCAP's market-based incentives, vehicle manufacturers made modifications to their product lines to increase their vehicles' geometric stability and rollover resistance by utilizing wider track widths (typically associated with passenger cars) on many of their newer sport utility vehicles (SUVs) and by making other improvements to truck-based SUVs during major redesigns (*e.g.*, introduction of roll stability control). This approach was successful in terms of reducing the much higher rollover rate of SUVs and other high-center-of-gravity vehicles, as compared to passenger cars. However, manipulating vehicle configuration alone cannot entirely resolve the rollover problem (particularly when consumers continue to demand vehicles with greater carrying capacity and higher ground clearance).

Accordingly, the agency began exploring technologies that could confront the issue of vehicle rollover from a different perspective or line of inquiry, which led to today's final rule. We believe that the ESC requirement offers a complementary approach that may provide substantial benefits to drivers of both passenger cars and LTVs (light trucks/vans). Undoubtedly, keeping vehicles from leaving the roadway is the best way to prevent deaths and injuries associated with rollover, as well as other types of

[1] 70 FR 49223, at 49229 (August 23, 2005).

crashes. Based on its crash data studies, NHTSA estimates that the installation of ESC systems will reduce single vehicle crashes of passenger cars by 34 percent and single vehicle crashes of sport utility vehicles (SUVs) by 59 percent. Its effectiveness is especially great for single-vehicle crashes resulting in rollover, where ESC systems were estimated to prevent 71 percent of passenger car rollovers and 84 percent of SUV rollovers in single vehicle crashes (*see* Section V).

In short, we believe that preventing single-vehicle loss-of-control crashes is the most effective way to reduce rollover deaths, and we believe that ESC offers considerable promise in terms of meeting this important safety objective while maintaining a broad range of vehicle choice for consumers. In fact, among the agency's ongoing and planned rulemakings, it is the single most effective way of reducing the total number of traffic deaths. It is also the most cost-effective of those rulemakings.

We note that this final rule also satisfies the recent mandate in section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU).[2] That provision requires the Secretary of Transportation to ''establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies'' and to ''issue a proposed rule * * * by October 1, 2006, and a final rule by April 1, 2009.'' In light of the tremendous life-saving potential anticipated to be associated with a requirement for ESC to be standard equipment on all light vehicles, the agency determined that, consistent with its mission to save lives, prevent injuries and reduce economic costs due to road traffic crashes, it was important to issue a final rule as soon as possible and accelerate the rate of installation. Accordingly, today's final rule is being published well in advance of the statutory deadline under SAFETEA–LU.

The balance of this notice discusses (1) The background regarding the size of the safety problem, the agency's comprehensive response to rollover-related safety problems, the agency's mandate under SAFETEA–LU, and ESC systems as a countermeasure to address single-vehicle crashes and rollovers (*see* Section II); (2) the agency's September 2006 NPRM for ESC and public comments on that proposal (*see* Section III); (3) the requirements and implementation of the final rule, including a detailed discussion regarding resolution of the issues raised in public comments (*see* Section IV); and (4) costs and benefits associated with the final rule (*see* Section V). However, before turning to this more detailed analysis, we summarize the key points of the final rule, including the requirements for ESC systems under FMVSS No. 126, lead time and phase-in, differences between the final rule and the NPRM, and the anticipated impacts of the final rule.

*A. Requirements of the Final Rule*

After careful consideration of all available information, including the public comments, the agency has decided to adopt in the ESC final rule most of the elements of the proposed rule. Consistent with SAFETEA–LU, NHTSA is requiring all light vehicles to be equipped with an ESC system with, at the minimum, the capabilities of current production systems. We believe that a requirement for such ESC systems is desirable in terms of both ensuring technological feasibility and providing the desired safety benefits in a cost-effective manner. Although vehicle manufacturers have been increasing the portion of the light vehicle fleet equipped with ESC, we believe that given the relatively high cost of this technology, a mandatory standard is necessary to maximize the safety benefits associated with electronic stability control, and is required by SAFETEA–LU.

In order to realize these benefits, we have decided to require vehicles to be equipped with an ESC system meeting definitional requirements and to pass a dynamic test. The definitional requirements specify the necessary elements of a stability control system that is capable of both effective oversteer and understeer intervention. These requirements are necessary due to the extreme difficulty in establishing tests adequate, by themselves, to ensure the desired level of ESC functionality in a variety of circumstances.[3] The test that we are adopting is necessary to ensure that the ESC system is robust and meets a level of performance at least comparable to that of current ESC systems. This approach is similar to the one we took, for similar reasons, in 1995 in mandating antilock brakes for medium and heavy vehicles pursuant to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.[4]

These requirements are summarized below:

• Consistent with the definition of ESC contained in a voluntary consensus standard, the Society of Automotive Engineers[5] (SAE) Surface Vehicle Information Report J2564 (rev. June 2004), we are requiring vehicles covered under the standard to be equipped with an ESC system that:

(1) Augments vehicle directional stability by applying and adjusting the vehicle brake torques individually to induce a correcting yaw moment to a vehicle;

(2) Is computer-controlled, with the computer using a closed-loop

[2] Pub. L. 109–59, 119 Stat. 1144 (2005).

[3] An equipment requirement is necessary because it would be almost impossible to devise a single performance test that could not be met through some action by the manufacturer other than providing an ESC system. Establishing a battery of performance tests to achieve our intended results is not possible at this time because we have not been able to develop a practical, repeatable limit-understeer test, and there are no applicable tests in vehicle dynamics literature. Although the agency has undertaken its own preliminary research efforts related to understeer, the complexity of such research would require several years of additional work before any conclusions could be reached regarding an ESC understeer performance test.

Given this, the agency determined that it had three available options: (1) Delay the ESC final rule and conduct research and development; (2) drop the understeer requirement and amend the standard once an ESC performance test is developed; or (3) include a requirement for understeer as part of the definition of ''ESC System,'' along with requiring specific components that will permit the system to intervene in excessive understeer situations.

The agency eliminated the first and second options on the grounds of safety.

The agency believes that the third option, adopting an understeer requirement as part of the definition of ''ESC System,'' along with a requirement for specific equipment suitable for that purpose, will accomplish the purposes of the statutory mandate. Such requirement is objective in terms of explaining to manufacturers what type of performance is required and the minimal equipment necessary for that purpose. The agency can verify that the system has the necessary hardware and logic for understeer mitigation. Since the necessary components for effective understeer intervention are already present on all ESC systems, we believe that manufacturers are highly unlikely to decrease their ESC systems' understeer capabilities simply because the standard does not have a specific test for understeer. The agency believes that its chosen approach will ensure that vehicle manufacturers maintain understeer intervention as a feature of the ESC system, without delaying the life-saving benefits of the ESC rule. In the meantime, the agency will conduct additional research in the area of ESC understeer intervention and consider taking additional action, as appropriate.

Even with an understeer test, the ultimate practicability of a standard without an equipment requirement remains in doubt because of the possible large number of test conditions that would be required.

[4] 60 FR 13216 (March 10, 1995).

[5] The Society of Automotive Engineers is an association of engineers, business executives, educators, and students who share information and exchange ideas for advancing the engineering of mobility systems. SAE currently has over 90,000 members in approximately 97 countries. The organization's activities include development of standards, events, and technical information and expertise used in designing, building, maintaining, and operating self-propelled vehicles for use on land or sea, in air or space. *See http://www.sae.org.*

algorithm[6] to limit vehicle oversteer and to limit vehicle understeer;

(3) Has a means to determine vehicle yaw rate[7] and to estimate its sideslip[8] or the time derivative of sideslip;

(4) Has a means to monitor driver steering input;

(5) Has an algorithm to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle, and

(6) Is operational over the full speed range of the vehicle (except at vehicle speeds less than 15 km/h (9.3 mph) or when being driven in reverse).

• The ESC system, as defined above, is also required to be capable of applying brake torques individually at all four wheels and to have an algorithm that utilizes this capability.[9] Except for the situations specifically set forth in part (6) of the definition of ''ESC System'' above, the system is also required to be operational during all phases of driving, including acceleration, coasting, and deceleration (including braking). It is also required to be capable of activation even if the anti-lock brake system or traction control system is also activated.

• In order to ensure that a vehicle is equipped with an ESC system that meets the definition of ''ESC System'' under S4, the final rule requires vehicle manufacturers to submit, upon the request of NHTSA's Office of Vehicle Safety Compliance, ESC system technical documentation as to when understeer intervention is appropriate for a given vehicle (*see* S5.6). Specifically, NHTSA may seek information such as a system diagram that identifies all ESC components, a written explanation describing the ESC system's basic operational characteristics, a logic diagram supporting the explanation of system operations, and a discussion of the pertinent inputs to the vehicle computer or calculations within the computer and how its algorithm uses that information and controls ESC system hardware to limit vehicle understeer.

• We are also requiring vehicles covered under the standard to meet a performance test. It must satisfy the standard's stability criteria and responsiveness criterion when subjected to the sine with dwell steering maneuver test. This test involves a vehicle's coasting at an initial speed of 50 mph while a steering machine steers the vehicle with a steering wheel pattern as shown in Figure 2 of the regulatory text. The test maneuver is then repeated over a series of increasing maximum steering angles. This test maneuver was selected over a number of other alternatives because we decided that it has the best set of characteristics, including severity of the test, repeatability and reproducibility of results, and the ability to address lateral stability and responsiveness.

The maneuver is severe enough to produce spinout for most vehicles without ESC. The stability criteria for the test measure how quickly the vehicle stops rotating after the steering wheel is returned to the straight-ahead position. A vehicle that continues to rotate for an extended period after the driver steers straight is out of control, which is what ESC is designed to prevent. The quantitative stability criteria are expressed in terms of the percent of the peak yaw rate after maximum steering that persists at a period of time after the steering wheel has been returned to straight ahead. They require that the vehicle yaw rate decrease to no more than 35 percent of the peak value after one second and that it continue to drop to no more than 20 percent after 1.75 seconds. Since a vehicle that simply responds very little to steering commands could meet the stability criteria, a minimum responsiveness criterion is applied to the same test.

• Because the benefits of the ESC system can only be realized if the system is functioning properly, we are requiring that a telltale be mounted inside the occupant compartment in front of and in clear view of the driver. The ESC malfunction telltale is required to illuminate after the occurrence of one or more malfunctions that affect the generation or transmission of control or response signals in the vehicle's ESC system. Such telltale must remain continuously illuminated for as long as the malfunction(s) exists, whenever the ignition locking system is in the ''On'' (''Run'') position.

• In certain circumstances, drivers may have legitimate reasons to disengage the ESC system or limit its ability to intervene, such as when the vehicle is stuck in sand/gravel, is being used while equipped with snow chains, or is being run on a track for maximum performance. Accordingly, under this final rule, vehicle manufacturers may include a driver-selectable switch that places the ESC system in a mode in which it does not satisfy the performance requirements of the standard (*e.g.*, ''sport'' mode or full-off mode). However, if the vehicle manufacturer chooses this option, it must ensure that the ESC system always returns to the fully-functional default mode at the initiation of each new ignition cycle, regardless of the mode the driver had previously selected (with certain exceptions for low speed off-road axle/transfer case selections that turn off ESC, but cannot be reset electronically). If the vehicle manufacturer chooses this option, it must also provide an ''ESC Off'' control and a telltale that is mounted inside the occupant compartment in front of and in clear view of the driver. Such telltale must remain continuously illuminated for as long as the ESC is in a mode that renders it unable to meet the performance requirements of the standard, whenever the ignition locking system is in the ''On'' (''Run'') position.

• We are not requiring the ESC system to be equipped with a roll stability control system. Roll stability control systems involve relatively new technology. There is currently an insufficient body of data to judge the efficacy of such systems. However, the agency will continue to monitor the development of these systems.

*B. Lead Time and Phase-In*

In order to provide the public with what are expected to be the significant safety benefits of ESC systems as rapidly as possible, compliance with this final rule is set to commence on September 1, 2008. That date marks the start of a three-year phase-in period. Subject to the special provisions discussed below, NHTSA has decided to require compliance in accordance with the following schedule: 55 percent of a vehicle manufacturer's light vehicles manufactured during the period from September 1, 2008 to August 31, 2009; 75 percent of those manufactured during the period from September 1, 2009 to August 31, 2010; 95 percent of those manufactured during the period from September 1, 2010 to August 31, 2011, and all light vehicles thereafter.

For the reasons discussed in detail in Section IV.B of this notice, we believe that it is practicable for vehicle manufacturers to meet the requirements of the phase-in discussed above, subject

[6] A ''closed-loop algorithm'' is a cycle of operations followed by a computer that includes automatic adjustments based on the result of previous operations or other changing conditions.

[7] ''Yaw rate'' means the rate of change of the vehicle's heading angle measured in degrees/second of rotation about a vertical axis through the vehicle's center of gravity.

[8] ''Sideslip'' means the arctangent of the lateral velocity of the center of gravity of the vehicle divided by the longitudinal velocity of the center of gravity.

[9] The standard was developed based on new vehicles produced in 2005 and 2006. The definition of ESC is limited to four-wheel ESC systems because existing two-wheel ESC systems are not capable of understeer invention or four-wheel automatic braking during an intervention, even though these systems also produced substantial (but lesser) benefits.

to the exceptions below. Because ESC is so cost-effective and has such high benefits in terms of potential fatalities and injuries that may be prevented, the agency has decided that it is important to require ESC installation in light vehicles as quickly as possible. Given the product plans we have from six vehicle manufacturers, and the desire to provide manufacturers with flexibility by having a carry-forward provision, we have chosen the most aggressive phase-in alternative that we believe is reasonable (*i.e.*, 55/75/95%). In doing so, we have carefully considered the financial and technological practicability of the final rule (in keeping with our statutory mandate), while at the same time facilitating ESC installation in the light vehicle fleet as expeditiously as possible.

With the above said, the agency has decided that it is appropriate to provide the following exceptions to the phase-in. First, we have decided to defer the standard's requirements related to the ESC telltales and controls until the end of the phase-in (*i.e.*, September 1, 2011 for most manufacturers; September 1, 2012 for final-stage manufacturers and alterers). Although vehicle manufacturers generally commented that they could bring their ESC systems into full compliance (including the control and telltale requirements), they stated that additional lead time would be necessary to accomplish those changes, suggesting that they could do so by the end of the phase-in. As a complicating matter, vehicle manufacturers and their trade associations explained that even though most current ESC systems would largely meet the performance requirements of the proposed standard, manufacturers' inability to meet the proposed control and display requirements would prevent them from earning the carry-forward credits needed to comply with the ESC phase-in schedule. Our analysis demonstrates that the safety benefits associated with early introduction of ESC systems, even without standardized controls and displays, far outweigh the benefits of delaying the standard until all systems can fully meet the control and display requirements (*see* FRIA's lead time/phase-in discussion). Accordingly, we believe that it is preferable to move rapidly to implement the standard, but to delay the compliance date only for the ESC control and telltale requirements.

As proposed, vehicle manufacturers may earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, which are manufactured between the effective date of the final rule and the conclusion of the phase-in period.[10]

This final rule excludes small volume manufacturers (*i.e.*, manufacturers producing less than 5,000 vehicles for sale in the U.S. market in one year) from the phase-in, instead requiring those manufacturers to fully comply with the standard beginning on September 1, 2011.

In addition, consistent with the policy set forth in NHTSA's February 14, 2005 final rule on certification requirements for vehicles built in two or more stages and altered vehicles (70 FR 7414), final-stage manufacturers and alterers are excluded from the requirements of the phase-in and are permitted an additional one year for compliance (*i.e.*, until September 1, 2012). However, final-stage manufacturers and alterers may voluntarily certify compliance with the standard prior to this date.

*C. Differences Between the Final Rule and the Notice of Proposed Rulemaking*

As noted above, NHTSA has decided to adopt most of the provisions in the NPRM as part of this final rule. We made a number of changes in response to the public comments on the NPRM. The main differences between the NPRM and the final rule involve an increase in the percentages of FMVSS No. 126-compliant vehicles that must be produced during the phase-in period, a delay in the requirements for standardized symbols and acronyms for ESC controls and displays until the end of the phase-in, and the inclusion of engine control as part of the standard's definition of ''ESC system.''

The following points briefly describe the main differences between the NPRM and this final rule.

- In order to increase fleet installation of life-saving ESC systems, the phase-in schedule for ESC is being accelerated to require 55 percent phase-in in the first year, 75 percent in the second year, and 95 percent in the third year, rather than the 30 percent, 60 percent, and 90 percent schedule that was proposed (*see* S8.1, S8.2, and S8.3 in the regulatory text of this final rule).
- The effective date for the requirement to use standardized symbols and acronyms as well as certain malfunction detection and ''ESC Off'' control functions has been moved to the end of the phase-in period. This was done in recognition of the fact that manufacturers will be relying on the carry-forward and compliance credits for vehicles in current production that pass all the ESC performance requirements, but currently lack the standardized controls and displays features proposed in the NPRM (*see* S5.3.1, S5.3.2; S5.3.4; S5.3.9; S5.4.2; S5.5.2; S5.5.3; S5.5.6).
- The definition of ''ESC System'' has been changed to require ESC systems with engine control, a feature that allows the ESC system to reduce vehicle speed during an intervention by cutting engine power as well as by brake application (*see* S4 ESC (5)). It was a feature on most vehicles in the crash data analysis and on all the vehicles in the ESC cost study.
- The definition of ''ESC System'' has been changed to delete the word ''as appropriate'' from the description of when the system must intervene to mitigate vehicle understeer (*see* S4 ESC (2)). Instead, in order to ensure that a vehicle is equipped with an ESC system that meets the definition of ''ESC System'' under S4, we have decided to require vehicle manufacturers to submit, upon the request of NHTSA's Office of Vehicle Safety Compliance, ESC system technical documentation as to when understeer intervention is appropriate for a given vehicle (*see* S5.6). Specifically, NHTSA may seek information such as a system diagram that identifies all ESC components, a written explanation describing the ESC system's basic operational characteristics, a logic diagram supporting the explanation of system operations, and a discussion of the pertinent inputs to the vehicle computer or calculations within the computer and how its algorithm uses that information and controls ESC system hardware to limit vehicle understeer.[11]
- The ''ESC System'' definition and performance requirements have been changed to refer to generating brake torques at all four wheels individually, rather than applying individual brakes, so that the action of regenerative braking by electric motors is included (*see* S4 ESC (1); S5.1.1).
- The definition of ''ESC System'' has been further changed to recognize that some systems operate by estimating the time derivative of side slip, rather than by measuring side slip directly. The final rule also defines the low speed threshold for ESC operation as 15 km/h (*see* S4 ESC (3), (6)).
- The responsiveness criterion has been changed to a two-stage criterion with a lower lateral displacement requirement for large vehicles (*i.e.*, ones

[10] We note that carry-forward credits may not be used to defer the mandatory compliance date of September 1, 2011 for all covered vehicles.

[11] We note here that we anticipate that much of this information is proprietary and would be submitted under a request for confidential treatment pursuant to 49 CFR Part 512.

over 7,716 pounds GVWR). It is applied during tests with a peak commanded steering angle of five times or greater than the steering wheel angle necessary to produce 0.3g steady-state lateral acceleration. This is a change from applying it simply for tests with steering wheel angles greater than 180 degrees. It compensates for the slower steering gear ratios of large vehicles. (*see* S5.2; S5.2.3; S6.3.5).

- Low-speed four-wheel-drive (4WD) modes that have the side effect of turning off ESC and that are selected by mechanical controls that cannot be automatically reset electrically are excluded from the requirement for automatic ESC restoration at the next ignition cycle (*see* S5.4.1).
- Under the final rule, outriggers will be used for testing of trucks, MPVs, and buses, and the maximum weight and roll moment of inertia are also specified for outriggers (*see* S6.3.4).
- The ESC malfunction detection test procedure has been modified to include a short driving and turning procedure so that ESC systems with self-diagnostics requiring vehicle motion can accomplish their function (*see* S7.10.2).

*D. Impacts of ESC and of the Final Rule*

Based on its analysis of the best available data, NHTSA estimates that ESC—both installed voluntarily and under this regulatory mandate—will save 5,300 to 9,600 lives and prevent 156,000 to 238,000 injuries in all types of crashes annually once all light vehicles on the road are equipped with ESC systems. A large portion of these savings will come from preventing large numbers of rollover crashes. ESC systems will substantially reduce (by 4,200 to 5,500) the more than 10,000 deaths that occur on American roads each year as a result of rollover crashes.

Manufacturers installed ESC in about 29 percent of model year (MY) 2006 light vehicles sold in the U.S., and intend to increase the percentage of ESC installation in light vehicles to 71 percent by MY 2011. This rule accelerates that rate of installation by requiring a 100 percent installation rate by MY 2012 (with exceptions for some vehicles manufactured in stages or by small volume manufacturers). We took that step because, in response to public comments and our review of vehicle manufacturers' production plans, we determined that it is practicable to increase the percentage of new light vehicles that must comply with Standard No. 126 under the phase-in, thereby accelerating the benefits expected to be provided by ESC systems.

As the discussion below demonstrates, ESC not only has a very significant life-saving and injury-preventing potential in absolute terms, but it also achieves these benefits in a very cost-effective manner vis-à-vis other agency rulemakings. ESC offers consistently strong benefits and cost-effectiveness across all types of light vehicles, including passenger cars, SUVs, vans, and pick-up trucks. Of the 5,300 to 9,600 highway deaths and 156,000 to 238,000 MAIS 1–5 injuries that we project will be prevented annually for all types of crashes once all light vehicles on the road are equipped with ESC, we attribute 1,547 to 2,534 prevented fatalities (including 1,171 to 1,465 involving rollover) to this rulemaking, in addition to the prevention of 46,896 to 65,801 injuries.

The agency estimates that the production-weighted, average cost per vehicle to meet the proposed standard's requirements will be $58 ($90.3 per passenger car and $29.2 per light truck).[12] These are incremental costs over the manufacturers' MY 2011 plans for installation of ABS, which is expected to be installed in almost 93 percent of the light vehicle fleet, and ESC, which is expected to be installed in 71 percent of the light vehicle fleet. Vehicle costs are estimated to be $368 (in 2005$) for anti-lock brakes (ABS) and an additional $111 for ESC, for a total system cost of $479 per vehicle. The total annual vehicle cost of this regulation, based on ESC installation beyond manufacturers' planned percentages, is expected to be approximately $985 million.

In terms of cost-effectiveness, this final rule is expected to save 1,547 to 2,534 lives and prevent 46,896 to 65,801 injuries at a cost of $0.18 to $0.33 million per equivalent life saved at a 3 percent discount rate and $0.26 to $0.45 million at a 7 percent discount rate.

The final rule is highly cost-effective even when passenger cars are considered alone. The passenger car portion of the final rule will save 945 lives and prevent 32,196 injuries at a cost of $0.38 million per equivalent life saved at a 3 percent discount rate and $0.50 at a 7 percent discount rate.

## II. Background

*A. Overview of the Safety Problem*

The following discussion explains the nature and scope of the safety problem which the agency seeks to address through this rulemaking for ESC, based upon our analysis of recent single-vehicle crash and rollover statistics. About one in seven light vehicles involved in police-reported crashes collides with something other than another vehicle. However, the proportion of these single-vehicle crashes increases steadily with increasing crash severity, and almost half of serious and fatal injuries occur in single-vehicle crashes. We can describe the relationship between crash severity and the number of vehicles involved in the crash using information from the agency's crash data programs. We limit our discussion here to ''light vehicles,'' which consist of passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less.[13]

The 2000–2005 data from the National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) and 2005 data from the Fatality Analysis Reporting System (FARS) were combined to estimate the current target population for this rulemaking. It includes 27,680 people who were killed as occupants of light vehicles (both single-vehicle and multi-vehicle crashes). Over half of these (15,191) occurred in single-vehicle crashes. Of these, 8,596 occurred in rollovers. About 1.0 million injuries (AIS 1–5) occurred in crashes that could be affected by ESC, almost 458,000 in single vehicle crashes (of which almost half were in rollovers). Multi-vehicle crashes that could be affected by ESC accounted for 12,485 fatalities and almost 547,000 injuries.

Rollover crashes are complex events that reflect the interaction of driver, road, vehicle, and environmental factors. We can describe the relationship between these factors and the risk of rollover using information from the agency's crash data programs.

According to 2005 data from FARS, 10,836 people were killed as occupants in light vehicle rollover crashes, which represents 34 percent of all occupants killed that year in crashes. Of those, 8,769 were killed in single-vehicle rollover crashes. Seventy-four percent of the people who died in single-vehicle rollover crashes were not using a seat belt, and 61 percent were partially or completely ejected from the vehicle (including 50 percent who were completely ejected). FARS shows that 55 percent of light vehicle occupant fatalities in single-vehicle crashes involved a rollover event.

[12] We note that the costs for passenger cars are higher because a greater portion of those vehicles require installation of ABS in addition to ESC.

[13] For brevity, we use the term ''light trucks'' in this document to refer to multipurpose passenger vehicles (*e.g.*, vans, minivans, and SUVs), trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less.

Using data from the 2000–2004 NASS CDS files, we estimate that 266,000 light vehicles were towed from a police-reported rollover crash each year (on average), and that 29,000 occupants of these vehicles were seriously injured. Of these 266,000 light vehicle rollover crashes, 219,000 were single-vehicle crashes. Sixty-one percent of those people who suffered a serious injury in a single-vehicle tow-away rollover crash were not using a seat belt, and 52 percent were partially or completely ejected (including 41 percent who were completely ejected). Estimates from NASS CDS indicate that 82 percent of tow-away rollovers were single-vehicle crashes, and that 88 percent (197,000) of the single-vehicle rollover crashes occurred after the vehicle left the roadway. An audit of 1992–96 NASS CDS data showed that about 95 percent of rollovers in single-vehicle crashes were tripped by mechanisms such as curbs, soft soil, pot holes, guard rails, and wheel rims digging into the pavement, rather than by tire/road interface friction as in the case of untripped rollover events.

*B. The Agency's Comprehensive Response to Rollover*

As mentioned above, this final rule for ESC is but one part of the agency's comprehensive plan to address the issue of vehicle rollover. The following discussion provides background on NHTSA's comprehensive plan to reduce rollover crashes. In 2002, the agency formed an Integrated Project Team (IPT) to examine the rollover problem and to make recommendations on how to reduce rollovers and to improve safety when rollovers nevertheless occur. In June 2003, based on the work of that team, the agency published a report titled, ''Initiatives to Address the Mitigation of Vehicle Rollover.'' [14] The report recommended improving vehicle stability, ejection mitigation, roof crush resistance, as well as road improvements and behavioral strategies aimed at consumer education.

Since then, the agency has been working to implement these recommendations as part of its comprehensive agency plan for reducing the serious risk of rollover crashes and the risk of death and serious injury when rollover crashes do occur. It is evident that the most effective way to reduce deaths and injuries in rollover crashes is to prevent the rollover crash from occurring. This final rule adopting a new Federal motor vehicle safety standard for electronic stability control systems is one key part of that comprehensive agency plan.

Moreover, we note that the agency also published a notice of proposed rulemaking in the **Federal Register** in August 2005, seeking to upgrade our safety standard on roof crush resistance (FMVSS No. 216); that notice, like the present one, contains an in-depth discussion of the rollover problem and the countermeasures which the agency intends to pursue as part of its comprehensive response to the rollover problem (*see* 70 FR 49223 (August 23, 2005)).

*C. Congressional Mandate Under Section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005*

During the course of the ongoing agency's research into ESC systems, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU).[15] Section 10301 of that Act contains legislative mandates for the agency to initiate a number of rulemakings, including ones for rollover prevention and occupant ejection prevention. In relevant part, that provision states:

> (a) In General.—The Secretary [of Transportation] shall initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.
>
> (b) Rollover Prevention.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies. The Secretary shall issue a proposed rule in this proceeding by rule by October 1, 2006, and a final rule by April 1, 2009.

This SAFETEA–LU mandate is consistent with the agency's efforts under its Comprehensive Rollover Safety Program (discussed above). The agency's research efforts had already identified electronic stability control systems as a mature and effective technology which has had adequate time to be analyzed in both the scientific literature, as well as by NHTSA researchers. These research results strongly suggest that fleet-wide installation of ESC systems should yield tremendous benefits in terms of the prevention of fatalities and injuries. Although the agency considered other potential ''stability enhancing technologies,'' there was no evidence to demonstrate that they would meet the need for motor vehicle safety (*see* Section IV.C.3 below). Accordingly, the agency has determined that adopting a requirement for installation of ESC systems in light vehicles would be consistent with the statutory mandate under section 10301 of SAFETEA–LU. Under our interpretation of that statutory provision, Congress provided the agency discretion to evaluate various stability enhancing technologies and to adopt a requirement for a system that the agency determines would best reduce the occurrence of rollovers. The agency agrees with Congress regarding the tremendous life-saving potential associated with ESC as a proven stability enhancing technology, and because of the agency's prior efforts, it was possible to publish today's final rule well in advance of the statutory deadline under SAFETEA–LU.

As this final rule makes clear, the agency has decided to implement the statutory mandate contained in section 10301 of SAFETEA–LU through promulgation of a Federal motor vehicle safety standard for ESC pursuant to 49 U.S.C. Chapter 301, *Motor Vehicle Safety*. Adoption of an FMVSS for ESC meets the statutory directive to ''establish performance criteria'' consistent with stability enhancing technologies. Furthermore, this approach is consistent with the agency's implementation of the statutory mandate for tire pressure monitoring systems contained in section 13[16] of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.[17]

*D. Electronic Stability Control as a Countermeasure to Address Single-Vehicle Crashes and Rollovers*

General Principles of ESC System Operation

Although Electronic Stability Control (ESC) systems have been known by a number of different trade names such as Vehicle Stability Control (VSC), Electronic Stability Program (ESP), StabiliTrak and Vehicle Stability Enhancement (VSE), their function and performance are similar. They are systems that use computer control of individual wheel brakes to help the driver maintain control of the vehicle during extreme maneuvers by keeping the vehicle headed in the direction the driver is steering even when the vehicle nears or reaches the limits of road traction.

When a driver attempts an ''extreme maneuver'' (*e.g.*, one initiated to avoid

[14] *See* Docket Number NHTSA 2003–14622–1.

[15] Pub. L. 109–59, 119 Stat. 1144 (2005).

[16] *See* 49 U.S.C. 30123 note (2003).

[17] Pub. L. 106–414, 114 Stat. 1800 (2000).

a crash or due to misjudgment of the severity of a curve), the driver may lose control if the vehicle responds differently as it nears the limits of road traction than it does during ordinary driving. The driver's loss of control can result in either the rear of the vehicle ''spinning out'' or the front of the vehicle ''plowing out.'' As long as there is sufficient road traction, a highly skilled driver may be able to maintain control in many extreme maneuvers using countersteering (*i.e.*, momentarily turning away from the intended direction) and other techniques. However, average drivers in a panic situation in which the vehicle is beginning to spin out would be unlikely to countersteer to regain control.

ESC uses automatic braking of individual wheels to adjust the vehicle's heading if it departs from the direction the driver is steering. Thus, it prevents the heading from changing too quickly (spinning out) or not quickly enough (plowing out). Although it cannot increase the available traction, ESC affords the driver the maximum possibility of keeping the vehicle under control and on the road in an emergency maneuver using just the natural reaction of steering in the intended direction.

Keeping the vehicle on the road prevents single-vehicle crashes, which are the circumstances that lead to most rollovers. However, if the speed is simply too great for the available road traction, even a vehicle with ESC will unavoidably drift off the road (but not spin out). Furthermore, ESC cannot prevent road departures due to driver inattention or drowsiness rather than loss of control.

How ESC Prevents Loss of Vehicle Control

The following explanation of ESC operation illustrates the basic principle of yaw stability control, but it does not attempt to explain advanced refinements of the yaw control strategy described below that use vehicle sideslip (lateral sliding that may not alter yaw rate) to optimize performance on slippery pavements.

An ESC system maintains what is known as ''yaw'' (or heading) control by determining the driver's intended heading, measuring the vehicle's actual response, and automatically turning the vehicle if its response does not match the driver's intention. However, with ESC, turning is accomplished by applying a brake force at a single wheel rather than by steering input. (The uneven brake force from braking only one wheel creates a yaw torque or moment that rotates the vehicle around a vertical axis.)

Speed and steering angle measurements are used to determine the driver's intended heading. The vehicle response is measured in terms of lateral acceleration and yaw rate by onboard sensors. If the vehicle is responding in a manner corresponding to driver input, the yaw rate will be in balance with the speed and lateral acceleration.

The concept of ''yaw rate'' can be illustrated by imaging the view from above of a car following a large circle painted on a parking lot. One is looking at the top of the roof of the vehicle and seeing the circle. If the car starts in a heading pointed north and drives half way around circle, its new heading is south. Its yaw angle has changed 180 degrees. If it takes 10 seconds to go half way around the circle, the ''yaw rate'' is 180 degrees per 10 seconds or 18 deg/sec. If the speed stays the same, the car is constantly rotating at a rate of 18 deg/sec around a vertical axis that can be imagined as piercing its roof. If the speed is doubled, the yaw rate increases to 36 deg/sec.

While driving in a circle, the driver notices that he must hold the steering wheel tightly to avoid sliding toward the passenger seat. The bracing force is necessary to overcome the lateral acceleration that is caused by the car following the curve. The lateral acceleration is also measured by the ESC system. When the speed is doubled the lateral acceleration increases by a factor of four if the vehicle follows the same circle. There is a fixed physical relationship between the car's speed, the radius of its circular path, and its lateral acceleration.

The ESC system uses this information as follows: Since the ESC system measures the car's speed and its lateral acceleration, it can compute the radius of the circle. Since it then has the radius of the circle and the car's speed, the ESC system can compute the correct yaw rate for a car following the path. Of course, the system includes a yaw rate sensor, and it compares the actual measured yaw rate of the car to that computed for the path the car is following. If the computed and measured yaw rates begin to diverge as the car that is trying to follow the circle speeds up, it means the driver is beginning to lose control, even if the driver cannot yet sense it. Soon, an unassisted vehicle would have a heading significantly different from the desired path and would be out of control either by oversteering (spinning out) or understeering.

When the ESC system detects an imbalance between the measured yaw rate of a vehicle and the path defined by the vehicle's steering wheel angle, speed, and lateral acceleration, the ESC system automatically intervenes to turn the vehicle. The automatic turning of the vehicle is accomplished by uneven brake application rather than by steering wheel movement. If only one wheel is braked, the uneven brake force will cause the vehicle's heading to change. Figure 1 shows the action of ESC using single wheel braking to correct the onset of oversteering or understeering. (Please note that all Figures discussed in this preamble may be found at the end of the preamble, immediately preceding the proposed regulatory text.)

- *Oversteering.* In Figure 1 (bottom panel), the vehicle has entered a left curve that is extreme for the speed it is traveling. The rear of the vehicle begins to slide which would lead to a vehicle without ESC turning sideways (or ''spinning out'') unless the driver expertly countersteers. In a vehicle equipped with ESC, the system immediately detects that the vehicle's heading is changing more quickly than appropriate for the driver's intended path (*i.e.*, the yaw rate is too high). It momentarily applies the right front brake to turn the heading of the vehicle back to the correct path. It will also cut engine power to gently slow the vehicle and, if necessary, apply additional brakes (while maintaining the uneven brake force to create the necessary yaw moment). The action happens quickly so that the driver does not perceive the need for steering corrections. Even if the driver brakes because the curve is sharper than anticipated, the system is still capable of generating uneven braking if necessary to correct the heading.
- *Understeering.* Figure 1 (top panel) shows a similar situation faced by a vehicle whose response as it nears the limits of road traction is to slide at the front (''plowing out'' or understeering) rather than oversteering. In this situation, the ESC system rapidly detects that the vehicle's heading is changing less quickly than appropriate for the driver's intended path (*i.e.*, the yaw rate is too low). It momentarily applies the left rear brake to turn the heading of the vehicle back to the correct path. Again, it will also cut engine power to gently slow the vehicle and, if necessary, apply additional brakes (while maintaining the uneven brake force to create the necessary yaw moment).

While Figure 1 may suggest that particular vehicles go out of control as either vehicles prone to oversteer or vehicles prone to understeer, it is just as likely that a given vehicle could require both understeer and oversteer interventions during progressive phases

of a complex avoidance maneuver such as a double lane change.

Although ESC cannot change the tire/road friction conditions the driver is confronted with in a critical situation, there are clear reasons to expect it to reduce loss-of-control crashes, as discussed below.

In vehicles without ESC, the response of the vehicle to steering inputs changes as the vehicle nears the limits of road traction. All of the experience of the average driver is in operating the vehicle in its ''linear range'', *i.e.*, the range of lateral acceleration in which a given steering wheel movement produces a proportional change in the vehicle's heading. The driver merely turns the wheel the expected amount to produce the desired heading. Adjustments in heading are easy to achieve because the vehicle's response is proportional to the driver's steering input, and there is very little lag time between input and response. The car is traveling in the direction it is pointed, and the driver feels in control. However, at lateral accelerations above about one-half ''g'' on dry pavement for ordinary vehicles, the relationship between the driver's steering input and the vehicle's response changes (toward oversteer or understeer), and the lag time of the vehicle response can lengthen. When a driver encounters these changes during a panic situation, it adds to the likelihood that the driver will lose control and crash because the familiar actions learned by driving in the linear range would not be the correct steering actions.

However, ordinary linear range driving skills are much more likely to be adequate for a driver of a vehicle with ESC to avoid loss of control in a panic situation. By monitoring yaw rate and sideslip, ESC can intervene early in the impending loss-of-control situation with the appropriate brake forces necessary to restore yaw stability before the driver would attempt an over correction or other error. The net effect of ESC is that the driver's ordinary driving actions learned in linear range driving are the correct actions to control the vehicle in an emergency. Also, the vehicle will not change its heading from the desired path in a way that would induce further panic in a driver facing a critical situation.

Besides allowing drivers to cope with emergency maneuvers and slippery pavement using only ''linear range'' skills, ESC provides more powerful control interventions than those available to even expert drivers of non-ESC vehicles. For all practical purposes, the yaw control actions with non-ESC vehicles are limited to steering. However, as the tires approach the maximum lateral force sustainable under the available pavement friction, the yaw moment generated by a given increment of steering angle is much less than at the low lateral forces occurring in regular driving [18]. This means that as the vehicle approaches its maximum cornering capability, the ability of the steering system to turn the vehicle is greatly diminished, even in the hands of an expert driver. ESC creates the yaw moment to turn the vehicle using braking at an individual wheel rather than the steering system. This intervention remains powerful even at limits of tire traction because both the braking force of the individual tire and the reduction of lateral force that accompanies the braking force act to create the desired yaw moment. Therefore, ESC can be especially beneficial on slippery surfaces. While a vehicle's possibility of staying on the road in a critical maneuver ultimately is limited by the tire/pavement friction, ESC maximizes an ordinary driver's ability to use the available friction.

Overview of ESC Effectiveness in Preventing Single-Vehicle and Rollover Crashes

Crash data studies conducted in the U.S., Europe, and Japan indicate that ESC is very effective in reducing single-vehicle crashes. Studies of the behavior of ordinary drivers in critical situations using the National Advanced Driving Simulator also show a very large reduction in instances of loss of control when the vehicle is equipped with ESC. Based on its crash data studies, NHTSA estimates that ESC will reduce single vehicle crashes of passenger cars by 34 percent and single vehicle crashes of SUVs by 59 percent. NHTSA's latest crash data study also shows that ESC is most effective in reducing single-vehicle crashes that result in rollover. ESC is estimated to prevent 71 percent of passenger car rollovers and 84 percent of SUV rollovers in single vehicle crashes. It is also estimated to reduce some multi-vehicle crashes but at a much lower rate than its effect on single vehicle crashes. The following discussion explains in detail the research finding upon which the agency has relied in determining the anticipated effectiveness of ESC systems.

Electronic stability control can directly reduce a vehicle's susceptibility to on-road untripped rollovers as measured by the ''fishhook'' test that is part of NHTSA's NCAP rollover rating program. The direct effect is mostly limited to untripped rollovers on paved surfaces. However, untripped on-road rollovers are a relatively infrequent type of rollover crash. In contrast, the vast majority of rollover crashes occur when a vehicle runs off the road and strikes a tripping mechanism such as soft soil, a ditch, a curb or a guardrail.

We expect that requiring ESC to be installed on light trucks and passenger cars would result in a large reduction in the number of rollover crashes by greatly reducing the number of single-vehicle crashes. As noted previously, over 80 percent of rollovers are the result of a single-vehicle crash. The purpose of ESC is to assist the driver in keeping the vehicle on the road during impending loss-of-control situations. In this way, it can prevent the exposure of vehicles to off-road tripping mechanisms. We note, however, that this yaw stability function of ESC is not direct ''rollover resistance'' and cannot be measured by the NCAP rollover resistance rating.

Although ESC is an indirect countermeasure to prevent rollover crashes, we believe it is the most powerful countermeasure available to address this serious risk. Effectiveness studies by NHTSA and others worldwide [19] estimate that ESC reduces single vehicle crashes by at least a third in passenger cars and perhaps reduces loss-of-control crashes (*e.g.*, road departures leading to rollovers) by an even greater amount. In fact, NHTSA's latest data study that is discussed in this section found a reduction in single-vehicle crashes leading to rollover of 71 percent for passenger cars and 84 percent for SUVs. Thus, ESC can reduce the numbers of rollovers of all vehicles, including lower center of gravity vehicles (*e.g.*, passenger cars, minivans and two-wheel drive pickup trucks), as

[18] Liebemann *et al.*, (2005) Safety and Performance Enhancement: The Bosch Electronic Stability Control (ESP), 19th International Technical Conference on the Enhanced Safety of Vehicles (ESV), Washington, DC.

[19] Aga M, Okada A. (2003) Analysis of Vehicle Stability Control (VSC)'s Effectiveness from Accident Data, 18th International Technical Conference on the Enhanced Safety of Vehicles (ESV), Nagoya.

Dang, J. (2004) Preliminary Results Analyzing Effectiveness of Electronic Stability Control (ESC) Systems, Report No. DOT HS 809 790. U.S. Dept. of Transportation, Washington, DC.

Farmer, C. (2004) Effect of Electronic Stability Control on Automobile Crash Risk, Traffic Injury Prevention Vol. 5:317–325.

Kreiss J-P, *et al.* (2005) The Effectiveness of Primary Safety Features in Passenger Cars in Germany. 19th International Technical Conference on the Enhanced Safety of Vehicles (ESV), Washington, DC.

Lie A., *et al.* (2005) The Effectiveness of ESC (Electronic Stability Control) in Reducing Real Life Crashes and Injuries. 19th International Technical Conference on the Enhanced Safety of Vehicles (ESV), Washington, DC.

well as of the higher center of gravity vehicle types (*e.g.*, SUVs and four-wheel drive pickup trucks). ESC can affect both crashes that would have resulted in rollover as well as other types of crashes (*e.g.*, road departures resulting in impacts) that result in deaths and injuries.

Human Factors Study on the Effectiveness of ESC

A study by the University of Iowa using the National Advanced Driving Simulator demonstrated the effect of ESC on the ability of ordinary drivers to maintain control in critical situations.[20] A sample of 120 drivers equally divided between men and women and between three age groups (18–25, 30–40, and 55–65) was subjected to the following three critical driving scenarios. The ''Incursion Scenario'' forced drivers to attempt a double lane change at high speed (65 mph speed limit signs) by presenting them first with a vehicle that suddenly backs into their lane from a driveway and then with another vehicle driving toward them in the left lane. The ''Curve Departure Scenario'' presented drivers with a constant radius curve that was uneventful at the posted speed limit of 65 mph followed by another curve that appeared to be similar but that had a decreasing radius that was not evident upon entry. The ''Wind Gust Scenario'' presented drivers with a sudden lateral wind gust of short duration that pushed the drivers toward a lane of oncoming traffic. The 120 drivers were further divided evenly between two vehicles, an SUV and a midsize sedan. Half the drivers of each vehicle drove with ESC enabled, and half drove with ESC disabled.

In 50 of the 179 test runs performed in a vehicle without ESC, the driver lost control. In contrast, in only six of the 179 test runs performed in a vehicle with ESC, did the driver lose control. One test run in each ESC status had to be aborted. These results demonstrate an 88 percent reduction in loss-of-control crashes when ESC was engaged. The study also concluded that the presence of an ESC system helped reduce loss of control regardless of age or gender, and that the benefit was substantially the same for the different driver subgroups in the study. Because of the obvious danger to participants, an experiment like this cannot be performed safely with real vehicles on real roads. However, the National Advanced Driver Simulator provides extraordinary verisimilitude with the driver sitting in a real vehicle, seeing a 360-degree scene and experiencing the linear and angular accelerations and sounds that would occur in actual driving of the specific vehicle.

Crash Data Studies of ESC Effectiveness

There have been a number of studies of ESC effectiveness in Europe and Japan beginning in 2003.[21] All of them have shown large potential reductions in single-vehicle crashes as a result of ESC. However, the sample sizes of crashes of vehicles new enough to have ESC tended to be small in these studies. A preliminary NHTSA study published in September 2004 [22] of crash data from 1997–2003 found ESC to be effective in reducing single-vehicle crashes, including rollover. Among vehicles in the study, the results suggested that ESC reduced single vehicle crashes in passenger cars by 35 percent and in SUVs by 67 percent. In October 2004, the Insurance Institute for Highway Safety (IIHS) released the results of a study of the effectiveness of ESC in preventing crashes of cars and SUVs. The IIHS found that ESC is most effective in reducing fatal single-vehicle crashes, reducing such crashes by 56 percent. NHTSA's later peer-reviewed study [23] of ESC effectiveness found that ESC reduced single vehicle crashes in passenger cars by 34 percent and in SUVs by 59 percent, and that its effectiveness was greatest in reducing single vehicle crashes resulting in rollover (71 percent reduction for passenger cars and an 84 percent reduction for SUVs). It also found reductions in fatal single-vehicle crashes and fatal single-vehicle rollover crashes that were commensurate with the overall crash reductions cited. ESC reduced fatal single-vehicle crashes in passenger cars by 35 percent and in SUVs by 67 percent and reduced fatal single-vehicle crashes involving rollover by 69 percent in passenger cars and 88 percent in SUVs.

(a) NHTSA's preliminary study

In September, 2004, NHTSA issued an evaluation note on the *Preliminary Results Analyzing the Effectiveness of Electronic Stability Control (ESC) Systems*. The study evaluated the effectiveness of ESC in reducing single vehicle crashes in various domestic and imported cars and SUVs. It was based on Fatality Analysis Reporting System (FARS) data from calendar years 1997–2003 and crash data from five States that reported partial Vehicle Identification Number (VIN) information in their data files (Florida, Illinois, Maryland, Missouri, and Utah) from calendar years 1997–2002. The data were limited to mostly luxury vehicles because ESC first became available in 1997 in luxury vehicles such as Mercedes-Benz and BMW. The analysis compared specific make/models of passenger cars and SUVs with ESC versus earlier versions of the same make/models, using multi-vehicle crash involvements as a control group.

The passenger car sample consisted of mainly Mercedes-Benz and BMW models (61 percent). Mercedes-Benz installed ESC in certain luxury models in 1997 and had made it standard equipment in all their models (except one) by 2000. BMW also installed ESC in certain 5, 7, and 8 series models as early as 1997 and had made it standard equipment in all their models by 2001. The passenger car sample also included some luxury GM cars, which constituted 23 percent of the sample, and a few cars from other manufacturers. GM cars where ESC was offered as standard equipment are the Buick Park Avenue Ultra, the Cadillac DeVille, Seville STS and SLS, the Oldsmobile Aurora, the Pontiac Bonneville SSE and SSEi, and the Chevrolet Corvette. The SUV make/models in the study with ESC include Mercedes-Benz (ML320, ML350, ML430, ML500, G500, G55 AMG), Toyota (4Runner, Landcruiser), and Lexus (RX300, LX470).

The first set of analyses used multi-vehicle crash involvements as a control group, essentially assuming that ESC has no effect on multi-vehicle crashes. Specific make/models with ESC were compared with earlier versions of similar make/models using multi-vehicle crash involvements as a control group, creating 2x2 contingency tables as shown in Tables 1 and 2. The study found that single vehicle crashes were reduced by

$$1 - \{(699/1483)/(14090/19444)\} = 35 \text{ percent}$$

for passenger cars and by 67 percent for SUVs (Table 1). Similarly, fatal single vehicle crashes were reduced by 30 percent in cars and by 63 percent in SUVs (Table 2). Reductions of single vehicle crashes in passenger cars and SUVs were statistically significant at the .01 level, as evidenced by chi-square statistics exceeding 6.64 in each 2x2 contingency table (Table 1). Reductions of fatal single vehicle crashes are

[20] Papelis *et al.* (2004) Study of ESC Assisted Driver Performance Using a Driving Simulator, Report No. N04–003–PR, University of Iowa.

[21] See Footnote 10.

[22] Dang, J. (2004) Preliminary Results Analyzing Effectiveness of Electronic Stability Control (ESC) Systems, Report No. DOT HS 809 790. U.S. Dept. of Transportation, Washington, DC.

[23] Dang, J. (2006) Statistical Analysis of The Effectiveness of Electronic Stability Control (ESC) Systems, U.S. Dept. of Transportation, Washington, DC (publication pending peer review). A draft version of this report, as supplied to peer reviewers, has been placed in the docket for this rulemaking.

statistically significant at the .01 level in SUVs and at the .05 level in passenger cars with chi-square statistic greater than 3.84 (Table 2).

TABLE 1.—EFFECTIVENESS OF ESC IN REDUCING SINGLE VEHICLE CRASHES IN PASSENGER CARS AND SUVS

[Preliminary study with 1997–2002 crash data from five States]

| | Single vehicle crashes | Multi-vehicle crashes (control group) |
|---|---|---|
| **Passenger Cars** | | |
| No ESC | 1483 | 19444 |
| ESC | 699 | 14090 |
| Percent reduction in single vehicle crashes in passenger cars with ESC | 35% | |
| Approximate 95 percent confidence bounds | 29% to 41% | |
| Chi-square value | 84.1 | |
| **SUVs** | | |
| No ESC | 512 | 6510 |
| ESC | 95 | 3661 |
| Percent reduction in single vehicle crashes in SUVs with ESC | 67% | |
| Approximate 95 percent confidence bounds | 60% to 74% | |
| Chi-square value | 104.4 | |

TABLE 2.—EFFECTIVENESS OF ESC IN REDUCING FATAL SINGLE VEHICLE CRASHES IN PASSENGER CARS AND SUVS

[Preliminary study with 1997–2003 FARS data]

| | Fatal single vehicle crashes | Fatal multi-vehicle crashes (control group) |
|---|---|---|
| **Passenger Cars** | | |
| No ESC | 186 | 330 |
| ESC | 110 | 278 |
| Percent reduction in fatal single vehicle crashes in passenger cars with ESC | 30% | |
| Approximate 95 percent confidence bounds | 10% to 50% | |
| Chi-square value | 6.0 | |
| **SUVs** | | |
| No ESC | 129 | 199 |
| ESC | 25 | 103 |
| Percent reduction in fatal single vehicle crashes in SUVs with ESC | 63% | |
| Approximate 95 percent confidence bounds | 44% to 81% | |
| Chi-square value | 16.1 | |

NHTSA has now updated and modified last year's report, extending it to model year 1997–2004 vehicles—and to calendar year 2004 for the FARS analysis and calendar year 2003 for the State data analysis. Nevertheless, even as of 2004, a large proportion of the vehicles equipped with ESC were still luxury vehicles. Moreover, only passenger cars and SUVs had been equipped with ESC—no pickup trucks or minivans.

The State databases included crash cases from California (2001–2003), Florida (1997–2003), Illinois (1997–2002), Kentucky (1997–2002), Missouri (1997–2003), Pennsylvania (1997–2001, 2003), and Wisconsin (1997–2003). The FARS database included fatal crash involvements from calendar years 1997 to 2004. The extra year of exposure and the availability of data from more states significantly increased the sample size of crashes of vehicles with ESC. In the preliminary study, the state crash database contained 699 single-vehicle crashes of cars with ESC and 95 single-vehicle crashes of SUVs with ESC. The FARS database contained 110 single-vehicle crashes of cars with ESC and 25 single-vehicle crashes of SUVs with ESC. For the updated study, the state crash database contains 2,251 single-vehicle crashes of cars with ESC and 553 single-vehicle crashes of SUVs with ESC, and the FARS database of fatal single-vehicle crashes contains 157 and 47 crashes respectively, for passenger cars and SUVs with ESC.

The larger sample of crashes in the updated study facilitated a new analysis of the effectiveness of ESC on specific subsets of single-vehicle crashes (SV run-off-road crashes and SV crashes resulting in rollover). It also facilitated the use of a more focused control group of crashes that were unlikely to be affected by ESC so that a new analysis of the effect of ESC on multi-vehicle crashes could be undertaken.

The basic analytical approach was to estimate the reduction of crash involvements of the types that are most likely to have benefited from ESC—relative to a control group of other types of crashes where ESC is unlikely to have made a difference in the vehicle's involvement. Crash types taken as the new control group (non-relevant involvements because ESC would in almost all cases not have prevented the crash) were crash involvements in which a vehicle:

(1) Was stopped, parked, backing up, or entering/leaving a parking space prior to the crash,

(2) Traveled at a speed less than 10 mph,

(3) Was struck in the rear by another vehicle, or

(4) Was a non-culpable party in a multi-vehicle crash on a dry road.

The types of crash involvements where ESC would likely or at least possibly have an effect are:

(1) All single vehicle crashes, except those with pedestrians, bicycles, or animals (SV crashes).

(2) Single vehicles crashes in which a vehicle ran off the road (SV ROR) and hit a fixed object and/or rolled over.

(3) Single vehicles crashes in which a vehicle rolled over (SV Rollover), mostly a subset of SV ROR.

(4) Involvements as a culpable party in a multi-vehicle crash on a dry or wet road (MV Culpable).

(5) Collisions with pedestrians, bicycles, or animals (Ped, Bike, Animal).

In the updated study we performed the state data analysis separately for each state. Then we used the median of the estimates from the seven states as the best indicator of the central tendency of the data, and the variation of the seven states as a basis for judging statistical significance and estimating confidence bounds. The results of this analysis are presented in Table 3.

TABLE 3.—UPDATED STUDY—MEAN EFFECTIVENESS OF ESC IN REDUCING CRASHES IN PASSENGER CARS AND SUVS BASED ON SEPARATE ANALYSES OF 1997–2003 CRASH DATA FROM SEVEN STATES

| | SV Crashes | SV ROR | SV Rollover | MV Culpable | Ped, bike, animal |
|---|---|---|---|---|---|
| **Passenger Cars** | | | | | |
| Mean percent reduction of listed crash type in passenger cars with ESC. | 34% | 46% | 71% | 11% | 34%. |
| Approximate 90 percent confidence bounds | 20% to 46% | 35% to 55% | 60% to 78% | 4% to 18% | 5% to 55%. |
| **SUVs** | | | | | |
| Mean percent reduction of listed crash type in SUVs with ESC. | 59% | 75% | 84% | 16% | −4% not statistically significant. |
| Approximate 90 percent confidence bounds | 47% to 68% | 68% to 80% | 75% to 90% | 7% to 24% | −28% to 15%. |

Fatal crashes were analyzed separately using the FARS database as was done in the preliminary study, but larger sample sizes were possible because of an additional year of data. The results are given in Table 4.

TABLE 4.—UPDATED STUDY—EFFECTIVENESS OF ESC IN REDUCING FATAL CRASHES OF PASSENGER CARS AND SUVS BASED ON 1997–2004 FARS DATA

| | SV Crashes | SV ROR | SV Rollover | MV Culpable | Ped, bike, animal | Control group |
|---|---|---|---|---|---|---|
| **Passenger Cars** | | | | | | |
| No ESC | 223 | 217 | 36 | 176 | 46 | 166 |
| ESC | 157 | 154 | 12 | 156 | 69 | 181 |
| Percent reduction of listed crash type in passenger cars with ESC. | 35% | 36% | 69% | 19% not statistically significant. | 38% not statistically significant. | |
| Approximate 90 percent confidence bounds. | 20% to 51% | 19% to 51% | 52% to 87% | −2% to 39% | −87% to 12%. | |
| Chi-square value | 8.58 | 8.17 | 12.45 | 1.82 | 2.14. | |
| **SUVs** | | | | | | |
| No ESC | 197 | 191 | 106 | 108 | 56 | 153 |
| ESC | 47 | 38 | 9 | 48 | 40 | 109 |
| Percent reduction of listed crash type in SUVs with ESC. | 67% | 72% | 88% | 38% | 0% not statistically significant. | |
| Approximate 90 percent confidence bounds. | 55% to 78% | 62% to 82% | 81% to 95% | 16% to 60% | −40% to 40%. | |
| Chi-square value | 29.57 | 36.44 | 42.4 | 4.89 | 0.00. | |

The effectiveness of ESC in reducing fatal single-vehicle crashes is similar to the effectiveness in reducing single-vehicle crashes from state data that included mostly non-fatal crashes. In the case of fatal crashes as well, the effectiveness of ESC in reducing single-vehicle rollover crashes was particularly high. The effectiveness of ESC in reducing fatal culpable multi-vehicle crashes of SUVs was also higher than in the analysis of state data, while the parallel analysis of multi-vehicle crashes of passenger cars did not achieve statistical significance.

The updated study of ESC effectiveness yielded robust results. The analysis of state data and a separate analysis of fatal crashes both reached similar conclusions on ESC effectiveness. ESC reduced single vehicle crashes of passenger cars by 34 percent and single vehicle crashes of

SUVs by 59 percent. The separate analysis of only fatal crashes supported the analysis of state data that included mostly non-fatal crashes. Therefore, the overall crash reductions demonstrated a significant life-saving potential for this technology. The effectiveness of ESC in reducing SV crashes shown in the latest data (Tables 3–4) is similar to the results of the preliminary analysis.

The effectiveness of ESC tended to be at least as great and possibly even greater for more severe crashes. Furthermore, the effectiveness of ESC in reducing the most severe type of crash in the study, the single-vehicle rollover crash, was remarkable. ESC reduced single-vehicle rollover crashes of passenger cars by 71 percent and of SUVs by 84 percent. This high level of effectiveness also carried over to fatal single-vehicle rollover crashes.

The benefits presented in Section V were calculated on the basis of the single-vehicle crash and single-vehicle rollover crash effectiveness results of Table 3 for reductions in non-fatal crashes and of Table 4 for reductions in fatal crashes. The single-vehicle rollover crash effectiveness results were applied only to first harmful event rollovers with the lower single-vehicle crash effectiveness results applied to all other rollover crashes for a more conservative benefit estimate.

## III. September 2006 Notice of Proposed Rulemaking (NPRM) and Public Comments

### *A. The NPRM*

As noted above, NHTSA published an NPRM on September 18, 2006 that proposed to establish FMVSS No. 126, *Electronic Stability Control Systems* (71 FR 54712). Specifically, it proposed to require passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 pounds) or less to be equipped with an ESC system that meets the requirements of the standard. As proposed, the vehicle would be required to meet a definitional requirement (*i.e.*, specifying the necessary elements of a stability control system that would be capable of both effective oversteer and understeer intervention) and to pass a dynamic performance test. These requirements are necessary due to the extreme difficulty in establishing a test adequate to ensure the desired level of ESC functionality.[24] The test is necessary to ensure that the ESC system is robust and meets a level of performance at least comparable to that of current ESC systems.

The NPRM included the following points, which highlighted the key provisions of the proposed requirements. However, for a more complete discussion—including detailed information on the proposal, as well as various potential performance tests (for both lateral stability and vehicle responsiveness) and regulatory alternatives considered by the agency—interested persons are encouraged to consult the NPRM.

• Consistent with the industry consensus definition of ESC contained in the Society of Automotive Engineers (SAE) Surface Vehicle Information Report J2564 (rev. June 2004), we proposed to require vehicles covered under the standard to be equipped with an ESC system that:

(1) Augments vehicle directional stability by applying and adjusting the vehicle's brakes individually to induce correcting yaw torques to a vehicle;

(2) Is computer-controlled, with the computer using a closed-loop algorithm[25] to limit vehicle oversteer and to limit vehicle understeer when appropriate;

(3) Has a means to determine vehicle yaw rate[26] and to estimate its sideslip[27];

(4) Has a means to monitor driver steering input, and

(5) Is operational over the full speed range of the vehicle (except below a low-speed threshold where loss of control of the vehicle is unlikely).

• The proposed ESC system, as defined above, would also be required to be capable of applying all four brakes individually and to have an algorithm that utilizes this capability. The system would also be required to be operational during all phases of driving, including acceleration, coasting, and deceleration (including braking), and it would be required to remain operational when the antilock brake system or traction control system is activated.

• We also proposed to require vehicles covered under the standard to satisfy the standard's stability criteria and responsiveness criterion when subjected to the Sine with Dwell steering maneuver test. This test involves a vehicle coasting at an initial speed of 50 mph while a steering machine steers the vehicle with a steering wheel pattern as shown in Figure 2 of the NPRM. The test maneuver is then repeated over a series of increasing maximum steering angles. This test maneuver was selected over a number of other alternatives, because we tentatively decided that it has the most optimal set of characteristics, including severity of the test, repeatability and reproducibility of results, and the ability to address lateral stability and responsiveness.

The maneuver is severe enough to produce spinout for most vehicles without ESC. The stability criteria for the test measure how quickly the vehicle stops turning after the steering wheel is returned to the straight-ahead position. A vehicle that continues to turn for an extended period after the driver steers straight is out of control, which is what ESC is designed to prevent. The stability criteria are expressed in terms of the percent of the peak yaw rate after maximum steering that persists at a period of time after the steering wheel has been returned to straight ahead. The criteria require that the vehicle yaw rate decrease to no more than 35 percent of the peak value after one second and that it continues to drop to no more than 20 percent after 1.75 seconds. Since a vehicle that simply responds very little to steering commands could meet the stability criteria, a minimum responsiveness criterion is applied to the same test. It requires that the ESC-equipped vehicle must move laterally at least 1.83 meters (half a 12 foot lane width) during the first 1.07 seconds after the initiation of steering (a discontinuity in the steering pattern that is convenient for timing a measurement).

• Because the benefits of the ESC system can only be realized if the system is functioning properly, we proposed to require a telltale be mounted inside the occupant compartment in front of and in clear view of the driver and be identified by the symbol shown for ''ESC Malfunction Telltale'' in Table 1 of FMVSS No. 101, *Controls and Displays.* The ESC malfunction telltale would be required to illuminate not more than two minutes after the occurrence of one or more malfunctions that affect the generation or transmission of control or response signals in the vehicle's ESC system.

[24] Without an equipment requirement, it would be almost impossible to devise a single performance test that could not be met through some action by the manufacturer other than providing an ESC system. Even a battery of performance tests still might not achieve our intended results, because although it might necessitate installation of an ESC system, we expect that it would be unduly cumbersome for both the agency and the regulated community.

[25] A ''closed-loop algorithm'' is a cycle of operations followed by a computer that includes automatic adjustments based on the result of previous operations or other changing conditions.

[26] ''Yaw rate'' means the rate of change of the vehicle's heading angle measured in degrees/second of rotation about a vertical axis through the vehicle's center of gravity.

[27] ''Sideslip'' means the arctangent of the lateral velocity of the center of gravity of the vehicle divided by the longitudinal velocity of the center of gravity.

Such telltale would be required to remain continuously illuminated for as long as the malfunction(s) exists, whenever the ignition locking system is in the ''On'' (''Run'') position. (Vehicle manufacturers would be permitted to use the ESC malfunction telltale in a flashing mode to indicate ESC operation.)

• In certain circumstances, drivers may have legitimate reasons to disengage the ESC system or limit its ability to intervene, such as when the vehicle is stuck in sand/gravel or when the vehicle is being run on a track for maximum performance. Accordingly, under this proposal, vehicle manufacturers would be permitted to include a driver-selectable switch that places the ESC system in a mode in which it would not satisfy the performance requirements of the standard (*e.g.*, ''sport'' mode or full-off mode). However, if the vehicle manufacturer chooses this option, it would be required to ensure that the ESC system always returns to a mode that satisfies the requirements of the standard at the initiation of each new ignition cycle, regardless of the mode the driver had previously selected. Furthermore, the manufacturer would be required to provide an ''ESC Off'' switch and a telltale that are mounted inside the occupant compartment in front of and in clear view of the driver and which are identified by the symbol or text shown for ''ESC Off'' in Table 1 of FMVSS No. 101. Such telltale would be required to remain continuously illuminated for as long as the ESC is in a mode that renders it unable to meet the performance requirements of the standard, whenever the ignition locking system is in the On (''Run'') position.

• We did not propose to require the ESC system to be equipped with a roll stability control function (or a separate system to that effect). Roll stability control systems involve relatively new technology, and we decided that there is currently insufficient data to judge the efficacy of such systems. However, the agency stated that it will continue to monitor the development of roll stability control systems. The NPRM also stated that vehicle manufacturers may supplement the ESC system we are proposing to require with a roll stability control system/feature.

In order to provide the public with the expected significant safety benefits of ESC systems as rapidly as possible, the NPRM proposed to require all light vehicles covered by this standard to be equipped with a FMVSS No. 126-compliant ESC system by September 1, 2011 (subject to the exception below). The agency proposed that compliance would commence on September 1, 2008, subject to the following phase-in schedule: 30 percent of a vehicle manufacturer's light vehicles manufactured during the period from September 1, 2008 to August 31, 2009 would be required to comply with the standard; 60 percent of those manufactured during the period from September 1, 2009 to August 31, 2010; 90 percent of those manufactured during the period from September 1, 2010 to August 31, 2011, and all light vehicles thereafter.

The NPRM stated that in order to encourage early compliance, the agency proposed that vehicle manufacturers would be permitted to earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, which are manufactured between the effective date of the final rule and the conclusion of the phase-in period. However, under the proposal, beginning September 1, 2011, all covered vehicles would be required to comply with the standard, without regard to any earlier carry-forward credits.

We proposed to exclude multi-stage manufacturers and alterers from the requirements of the phase-in and to extend by one year the time for compliance by those manufacturers (*i.e.*, until September 1, 2012). This NPRM also proposed to exclude small volume manufacturers (*i.e.*, manufacturers producing less than 5,000 vehicles for sale in the U.S. market in one year) from the phase-in, instead requiring such manufacturers to fully comply with the standard on September 1, 2011.

International Discussions of a Potential Global Technical Regulation on ESC

Based upon the agency's analysis of available research, we believe that the benefits of ESC are more broadly applicable than to just the U.S. driving environment. Instead, we believe that ESC has the potential to greatly benefit road users in all parts of the world. Therefore, throughout the development of its ESC proposal, NHTSA made particular efforts to keep other governments informed on the progress of its rulemaking. The agency accomplished this through several bilateral exchanges, as well as through its role in the United National World Forum for the Harmonization of Vehicle Regulations (WP.29) in Geneva, Switzerland.

Specifically, the United States negotiated the placement of electronic stability control systems on the Program of Work of WP.29 under the 1998 Global Agreement,[28] in order to formalize and facilitate information exchange on this topic. Since early 2005, agency officials have provided formal presentations on the ESC rulemaking to WP.29 and its specialized subsidiary body for stability control systems four times during formal session meetings. More recently, in November 2006, the NHTSA Administrator delivered remarks at the 140th session of WP.29, in which she outlined the benefits of this new technology and encouraged the Forum to pursue the development of a Global Technical Regulation (GTR) for ESC. The proposal[29] was met with great interest and was accepted by several of the government representatives in attendance. The representatives were especially impressed that the benefits of ESC technology are well-corroborated through several studies conducted independently around the world. Formal work to develop a GTR on electronic stability control is expected to begin in 2007.

*B. Summary of the Public Comments on the NPRM*

NHTSA received comments on the September 18, 2006 NPRM from a variety of interested parties, including seven automobile manufacturers and their trade associations,[30] nine suppliers of automobile equipment and their trade association,[31] four safety advocacy organizations,[32] and two other interested organizations.[33] Comments

[28] Although commonly referred to as the 1998 Global Agreement, this provision is more formally titled the ''1998 Agreement Concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles.''

[29] *See http://www.unece.org/trans/doc/2007/wp29/ECE-TRANS-WP29-2007-17e.doc.*

[30] Comments were received from the following automobile manufacturers and related trade associations: (1 and 2) Alliance of Automobile Manufacturers and Association of International Automobile Manufacturers (joint comments); (3) Honda Motor Co. Ltd. and American Honda Motor Co., Inc.; (4) Nissan North America, Inc.; (5) Porsche Cars North America, Inc.; (6) Toyota Motor North America, Inc., and (7) Verband der Automobilindustrie.

[31] Comments were received from the following automobile equipment suppliers and their trade associations: (1) BorgWarner Torq Transfer Systems, Inc.; (2) Continental Automotive Systems; (3) Delphi Corporation; (4) Motor & Equipment Manufacturers Association; (5) Oxford Technical Solutions, Ltd.; (6) RLP Engineering; (7) Robert Bosch Corporation; (8) Specialty Equipment Market Association, and (9) TRW Automotive.

[32] Comments were received from the following safety advocacy organizations: (1) Advocates for Highway and Auto Safety; (2) Consumers Union; (3) Insurance Institute for Highway Safety, and (4) Public Citizen.

[33] Comments were received from the following other interested organizations: (1) National Mobility Equipment Dealers Association, and (2) SUVOA.

were also received from eight individuals. All of these comments may be found in Docket No. NHTSA–2006–25801.

Although certain of the comments from individuals objected to the ESC proposal (on the grounds of cost, newness of the technology, and concerns that it inappropriately may wrest vehicle control from the driver during critical situations), the overwhelming majority of the commenters supported establishing a safety standard for ESC systems as required equipment on new light vehicles. Instead, the difference of opinion among the commenters involved the stringency of the standard (including a requirement for advanced features), the test procedures (including need for understeer performance requirements), and the proposed lead time and phase-in for implementing the new standard. Other topics included making the ''ESC System'' definition more performance-based, lateral responsiveness criteria, ESC performance requirements, ESC malfunction detection requirements, ESC telltale requirements, system disablement and the ''ESC Off'' switch, test procedures, impacts on the aftermarket, comments on the preliminary regulatory impact analysis (PRIA), ESC outreach efforts, and other topics. The following discussion summarizes the main issues raised by these public comments and the positions expressed on these topics. A more complete discussion of the public comments is provided under Section IV.C, which provides an explanation of the agency rationale for the requirements of the final rule and addresses related public comments by issue.

## IV. The Final Rule and Response to Public Comments

### *A. Summary of the Requirements*

After careful consideration of the public comments on the NPRM, this final rule establishes FMVSS No. 126, *Electronic Stability Control Systems.* Specifically, it requires passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 Kg (10,000 pounds) or less to be equipped with an ESC system that meets the requirements of the standard, in order to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). Subject to the phase-in schedule and the exceptions below, compliance with the requirements of the final rule commences for covered vehicles manufactured on or after September 1, 2008 (*i.e.*, MY 2009).

The following points highlight the key provisions of the final rule.

- Consistent with the industry consensus definition of ESC contained in the Society of Automotive Engineers (SAE) Surface Vehicle Information Report J2564 (rev. June 2004), we are requiring vehicles covered under the standard to be equipped with an ESC system that:

(1) Augments vehicle directional stability by applying and adjusting the vehicle brake torques individually to induce a correcting yaw moment to a vehicle;

(2) Is computer-controlled, with the computer using a closed-loop algorithm [34] to limit vehicle oversteer and to limit vehicle understeer;

(3) Has a means to determine vehicle yaw rate [35] and to estimate its sideslip [36] or the time derivative of sideslip;

(4) Has a means to monitor driver steering input;

(5) Has an algorithm to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle, and

(6) Is operational over the full speed range of the vehicle (except at vehicle speeds less than 15 km/h (9.3 mph) or when being driven in reverse).

- The ESC system as defined above is also required to be capable of applying brake torques individually at all four wheels and to have an algorithm that utilizes this capability. Except for the situations specifically set forth in part (6) of the definition of ''ESC System'' above, the system is also required to be operational during all phases of driving, including acceleration, coasting, and deceleration (including braking), and it is required to be capable of activation even if the anti-lock brake system or traction control system is also activated.
- In order to ensure that a vehicle is equipped with an ESC system that meets the definition of ''ESC System'' under S4, the final rule requires vehicle manufacturers to submit, upon the request of NHTSA s Office of Vehicle Safety Compliance, ESC system technical documentation as to when understeer intervention is appropriate for a given vehicle (*see* S5.6). Specifically, NHTSA may seek information such as a system diagram that identifies all ESC components, a written explanation describing the ESC system's basic operational characteristics, a logic diagram supporting the explanation of system operations, and a discussion of the pertinent inputs to the vehicle computer or calculations within the computer and how its algorithm uses that information and controls ESC system hardware to limit vehicle understeer.
- We are also requiring vehicles covered under the standard to meet performance tests. It must satisfy the standard s stability criteria and responsiveness criterion when subjected to the Sine with Dwell steering maneuver test. This test involves a vehicle coasting at an initial speed of 50 mph while a steering machine steers the vehicle with a steering wheel pattern as shown in Figure 2 of the regulatory text. The test maneuver is then repeated over a series of increasing maximum steering angles. This test maneuver was selected over a number of other alternatives, because we decided that it has the most optimal set of characteristics, including severity of the test, repeatability and reproducibility of results, and the ability to address lateral stability and responsiveness.

The maneuver is severe enough to produce spinout for most vehicles without ESC. The stability criteria for the test measure is how quickly the vehicle stops turning after the steering wheel is returned to the straight-ahead position. A vehicle that continues to turn for an extended period after the driver steers straight is out of control, which is what ESC is designed to prevent. The quantitative stability criteria are expressed in terms of the percent of the peak yaw rate after maximum steering that persists at a period of time after the steering wheel has been returned to straight ahead. The criteria require that the vehicle yaw rate decrease to no more than 35 percent of the peak value after one second and that it continues to drop to no more than 20 percent after 1.75 seconds. Since a vehicle that simply responds very little to steering commands could meet the stability criteria, a minimum responsiveness criterion is applied to the same test. It requires that an ESC-equipped vehicle with a GVWR of 7,716 pounds or less must move laterally at least 6 feet during the first 1.07 seconds after the initiation of steering (a discontinuity in the steering pattern that is a convenient point for timing a

[34] A ''closed-loop algorithm'' is a cycle of operations followed by a computer that includes automatic adjustments based on the result of previous operations or other changing conditions.

[35] ''Yaw rate'' means the rate of change of the vehicle's heading angle measured in degrees/second of rotation about a vertical axis through the vehicle's center of gravity.

[36] ''Sideslip'' means the arctangent of the lateral velocity of the center of gravity of the vehicle divided by the longitudinal velocity of the center of gravity.

measurement). It also requires that a heavier vehicle with a GVWR up to 10,000 pounds must move at least 5 feet laterally in the same maneuver for specified steering angles.

• Because the benefits of the ESC system can only be realized if the system is functioning properly, we are requiring a telltale be mounted inside the occupant compartment in front of and in clear view of the driver and be identified by the symbol or text shown for ''ESC Malfunction Telltale'' in Table 1 of FMVSS No. 101, *Controls and Displays.* The ESC malfunction telltale is required to illuminate after the occurrence of one or more malfunctions that affect the generation or transmission of control or response signals in the vehicle's ESC system. Such telltale must remain continuously illuminated for as long as the malfunction(s) exists, whenever the ignition locking system is in the ''On'' (''Run'') position. (Vehicle manufacturers are permitted to use the ESC malfunction telltale in a flashing mode to indicate ESC operation.)

• In certain circumstances, drivers may have legitimate reasons to disengage the ESC system or limit its ability to intervene, such as when the vehicle is stuck in sand/gravel, using snow chains, or when the vehicle is being run on a track for maximum performance. Accordingly, under this final rule, vehicle manufacturers may include a driver-selectable control that places the ESC system in a mode in which it would not satisfy the performance requirements of the standard (*e.g.*, ''sport'' mode or full-off mode). However, if the vehicle manufacturer chooses this option, it must ensure that the ESC system always returns to the fully-functional default mode at the initiation of each new ignition cycle, regardless of the mode the driver had previously selected (with certain exceptions for low speed off-road axle/transfer case selections that turn off ESC but cannot be reset electronically). The manufacturer is required to provide an ''ESC Off'' control and a telltale that are mounted inside the occupant compartment in front of and in clear view of the driver and which are identified by the symbol or text shown for ''ESC Off'' in Table 1 of FMVSS No. 101 or the text ''ESC Off.'' Such telltale must remain continuously illuminated for as long as the ESC is in a mode that renders it unable to meet the performance requirements of the standard, whenever the ignition locking system is in the ''On'' (''Run'') position.

*B. Lead Time and Phase-in*

In order to provide the public as rapidly as possible with what are expected to be the significant safety benefits of ESC systems, NHTSA has decided to require all light vehicles covered by this standard to be equipped with a FMVSS No. 126-compliant ESC system by September 1, 2011 (with certain exceptions discussed below). This implementation date for full, mandatory compliance is the same as that proposed in the NPRM and is consistent with our stated intention to have 90 percent of the subject fleet equipped with ESC in the 2011 model year that starts September 1, 2010. The agency continues to believe that this schedule for full implementation of the safety standard for ESC is appropriate, in order to provide manufacturers adequate lead time to make necessary production changes. September 1, 2008 marks the start of a three-year phase-in period for FMVSS No. 126.

However, in response to public comments and upon further review of the production plans [37] voluntarily submitted by vehicle manufacturers, we have determined that it would be practicable to increase the percentage of new light vehicles that must comply with Standard No. 126 under the phase-in, thereby accelerating the benefits expected to be provided by ESC systems. Because ESC is so cost-effective and has such high benefits in terms of potential fatalities and injuries that may be prevented, the agency agrees that it is important to require ESC installation in light vehicles as quickly as possible. Accordingly, under this final rule, we are requiring the following phase-in schedule for FMVSS No. 126: 55 percent of a vehicle manufacturer's light vehicles manufactured during the period from September 1, 2008 to August 31, 2009 would be required to comply with the standard; 75 percent of those manufactured during the period from September 1, 2009 to August 31, 2010; 95 percent of those manufactured during the period from September 1, 2010 to August 31, 2011, and all light vehicles thereafter. (This compares to the NPRM's proposal for a 30/60/90/all phase-in schedule over the same time periods.)

In order to ensure the financial and technological practicability of the final rule (in keeping with our statutory mandate), while at the same time facilitating ESC installation in the light vehicle fleet as expeditiously as possible, the agency analyzed the product plans submitted by six vehicle manufacturers, whose combined production accounts for approximately 87 percent of the new light vehicle fleet.[38] As explained in Chapter VII of the FRIA, we examined three different potential phase-in schedules to find the right balance among these competing concerns. Based upon this product plan information and the desire to provide manufacturers with flexibility by having a carry forward provision, we have chosen the most aggressive phase-in alternative that we believe is reasonable (*i.e.,* 55/75/95%).

Two factors were controlling in making the decision as to which alternative to choose: (1) The ability of manufacturers to change vehicles from being equipped with optional ESC to standard ESC for MY 2010 and MY 2011; and (2) Not forcing any manufacturer to install ESC in any make/model for which it was not planned to be at least an option. The agency did not believe there was enough lead time to redesign a make/model to include ESC by MY 2009. While there may be enough time to redesign such a make/model to include ESC by MY 2010, given the carry forward provisions this was not necessary for any of the six manufacturers for MY 2010. The second consideration became a factor once again in MY 2011, in not going beyond 95 percent (thereby obviating the costly need to redesign and develop tooling for a few vehicle lines which will not be produced in MY 2012).

In general, we anticipate that vehicle manufacturers will be able to meet the requirements of the standard by installing ESC system designs currently in production (*i.e.*, ones available in MY 2006). Except for possibly some low-production-volume vehicles with infrequent design changes (addressed below), NHTSA believes that most other vehicles can reasonably be equipped with ESC within three to four model years. We have determined that the majority of vehicle manufacturers would be able to meet the first two years of the revised phase-in schedule, without revising their current

[37] In April 2006, NHTSA sent letters to seven vehicle manufacturers requesting voluntary submission of information regarding their planned production of ESC-equipped vehicles for model years 2007 to 2012. Six manufacturers responded with product plans containing confidential information. These agency letters and manufacturer responses (with confidential information redacted) may be found in Docket No. NHTSA–2006–25801.

[38] We note that manufacturers' product plans have continued to evolve during the course of this rulemaking. For example, in a September 13, 2006 press release, Ford Motor Company announced that 100 percent of its light vehicle fleet would have ESC as standard equipment by MY 2010 (*see http://www.consumeraffairs.com/news04/2006/09/ford_stability.html*). The agency has carefully considered such developments in setting the phase-in schedule for this final rule.

production plans for ESC-equipped vehicles, given available phase-in credits under the rule. For the other manufacturers, they will have to increase production of ESC-equipped vehicles to comply with this accelerated phase-in schedule, but the available lead time is sufficient to allow for orderly planning for this increase and to achieve full implementation. Furthermore, we do not believe that the final rule's phase-in should pose ESC supply problems; public comments from vehicle manufacturers and ESC suppliers did not raise any such supply concerns, and our analysis of vehicle manufacturers' production plans suggest that the selected phase-in schedule will result in an installation rate increase of only a few percentage points in any year of the phase-in. Overall, we have determined that the final rule's phase-in schedule may be accomplished without disruptive changes in manufacturer and supplier production processes.[39]

After outlining the general parameters of the phase-in for FMVSS No. 126, we now turn to a number of exceptions or exclusions from the phase-in intended to address certain classes of vehicle manufacturers that may require additional time to achieve compliance and to address certain ESC components that may pose problems for a broader range of manufacturers in the short term. As an initial matter, we now understand from the public comments that vehicle manufacturers currently employ a variety of approaches for ESC controls and telltales, many of which would not meet the requirements of the agency's proposal. As a complicating matter, vehicle manufacturers and their trade associations explained that even though most current ESC systems would largely meet the performance requirements of the proposed standard, manufacturers' inability to meet the proposed control and display requirements would prevent them from earning the carry-forward credits needed to comply with the NPRM's aggressive phase-in schedule. Vehicle manufacturers generally commented that they could bring their ESC systems into full compliance (including the control and telltale requirements) by the end of the phase-in, and they argued that it is the performance of the ESC systems themselves, not the messages provided by the controls and telltales, that impart safety benefits under the standard.

After consideration of the numerous manufacturer comments on this issue, we have decided to defer the standard's requirements related to the ESC telltales and controls until the end of the phase-in (*i.e.*, September 1, 2011 for most manufacturers; September 1, 2012 for final-stage manufacturers and alterers); however, at that point, all covered vehicles must meet all relevant requirements of the standard (*i.e.*, no additional phase-in for the control and telltale requirements). Manufacturers are encouraged to voluntarily install compliant ESC controls and displays prior to the mandatory compliance date. Our rationale for this change from our proposal is as follows.

We now understand that standardizing ESC controls and telltales will involve substantial design and production changes and that additional lead time will be required to effect those changes. In addition, our analysis demonstrates that the safety benefits associated with early introduction of ESC systems, even without standardized controls and displays, far outweigh the benefits of delaying the standard until all systems can fully meet the control and display requirements (*see* FRIA's lead time/phase-in discussion). We do not believe that implementation of the entire standard should be delayed until technical changes related to the ESC controls and telltales can be fully resolved, because they would deny the public the safety benefits of ESC systems in the meantime. Accordingly, we believe that it is preferable to move rapidly to implement the standard, but to delay the compliance date only for the ESC control and telltale requirements.

This final rule also excludes small volume manufacturers (*i.e.*, manufacturers producing less than 5,000 vehicles for sale in the U.S. market in one year) from the phase-in, instead requiring such manufacturers to fully comply with the standard on September 1, 2011. This exclusion should facilitate implementation for low-production-volume vehicles with infrequent design changes.

Consistent with the policy set forth in NHTSA's February 14, 2005 final rule on certification requirements for vehicles built in two or more stages and altered vehicles (70 FR 7414), final-stage manufacturers and alterers are excluded from the requirements of the phase-in and are permitted an additional one year for compliance (*i.e.*, until September 1, 2012). However, final-stage manufacturers and alterers may voluntarily certify compliance with the standard prior to this date.

Vehicle manufacturers may earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, which are manufactured between the effective date of the final rule and the conclusion of the phase-in period. (We note that carry-forward credits may not be used to defer the mandatory compliance date of September 1, 2011 for all covered vehicles.) The final rule also includes phase-in reporting requirements for ESC systems (contained in Subpart I of 49 CFR Part 585) which are consistent with the phase-in schedule discussed above.

*C. Response to Public Comments by Issue*

As noted previously, public comments on the September 2006 NRPM for ESC raised a variety of issues with the NPRM's proposed requirements. Each of these topics will be discussed in turn, in order to explain how these comments impacted the agency's determinations in terms of setting requirements for this final rule.

Major Issues

1. Approach of the ESC NPRM

Subject to the phase-in schedule set forth in S8, the NPRM for ESC proposed to require new vehicles covered by Standard No. 126 to be equipped with an ESC system that meets the requirements specified in S5 under the test conditions specified in S6 and the test procedures specified in S7 of this standard (*see* S5, *Requirements*). The proposed standard would apply to passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less (*see* S3.1, *Application*).

NHTSA also noted that the ESC proposal would implement the provision in section 10301 of SAFETEA–LU, which requires the Secretary of Transportation to ''establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies'' and to issue a final rule by April 1, 2009.

A number of commenters on the NPRM raised issues regarding the general approach taken by the agency in terms of its proposal for ESC. These comments are discussed immediately below.

(a) ESC Mandate vs. ESC Standardization

Mr. Kiefer urged NHTSA to adopt specifications for standardization of ESC systems that manufacturers voluntarily choose to install, rather than mandating

[39] We note that the agency has considered the possibility that external forces (*e.g.*, increases in gasoline prices, changing consumer preferences) might affect demand for specific types of vehicles, such as SUVs, which have higher ESC penetration. Such concerns provided further reason for the agency to adopt a phase-in schedule that included a provision for carry-forward credits.

installation at this time. The commenter stated that this approach would provide a trial period during which the ESC requirements could be evaluated, prior to fleet-wide installation.

We believe Mr. Kiefer's suggested approach falls short in light of the advanced state of development of ESC systems. Moreover, our analysis of the real-world experience with ESC to date indicates that a rulemaking mandate for it will save thousands of lives each year on American roadways. Our analyses also indicate that a mandate for ESC will be among the most cost-effective of NHTSA's rules ever. Moreover, the agency is not aware of any significant operational problems for ESC systems now in millions of vehicles on the American roads, nor have ESC suppliers or vehicle manufacturers indicated that there are such problems. Under these circumstances, there is no reason to delay proceeding to a mandate for this life-saving technology to be on all light vehicles.

(b) ESC as Part of a Comprehensive Rollover Safety Program

The comments of Advocates for Highway and Auto Safety (Advocates) included a lengthy discussion of what it perceives to be the agency's failure to carry out a comprehensive rollover crash safety plan. Public Citizen similarly argued that the ESC rulemaking should be part of a comprehensive rollover plan, and in particular, it objected to the proposal's failure to include a requirement for roll stability control (cited as currently in production on the Volvo XC–90). According to Public Citizen, a requirement for roll stability control would lead SUVs to be equipped with roll sensors, which it argued would in turn enhance safety features critical for ejection mitigation such as seatbelt pretensioners, advanced window glazing, and side impact airbags.

As we have stated in the past and in the NPRM for this rule, the agency adopted such a comprehensive plan in June 2003, which envisions agency efforts (several of which are currently underway) to improve vehicle stability, ejection mitigation, roof crush resistance, as well as road improvements and behavioral strategies aimed at consumer education. The relevant legislative provisions contained in SAFETEA–LU are fully consistent with the agency's ongoing efforts to prevent rollover crashes and to reduce their severity when they do occur.

Our analysis demonstrates that ESC systems can have a major positive impact in terms of preventing loss of control and keeping the vehicle on the roadway, thereby preventing rollovers. Regarding our decision not to propose a requirement for roll stability control, the agency made this determination because there is little data available to assess whether that feature actually provides any additional safety benefits, given that it appears that some current systems add this feature to ESC. Note that we believe that current systems that include roll stability control will satisfy the requirements for ESC. Under 49 U.S.C. 30111, a safety standard must be practicable, meet the need for motor vehicle safety, and be stated in objective terms; in setting the standard, relevant, available motor vehicle safety information must be considered. In this case, the dearth of information about roll stability control effectively precludes the agency from adopting a roll stability requirement, because it is not possible to determine whether this technology meets the need for safety. At the same time, this rule does not establish any barriers to automakers' adding roll stability control to ESC systems, nor to customers' demanding it. The issue of roll stability control and other ESC features is discussed in further detail in Section IV.C.3 of this document.

Impact on Other NHTSA Rulemakings

Advocates argued that the ESC NPRM and accompanying PRIA should take into account that rulemaking's impact on the agency's proposal [40] to upgrade FMVSS No. 216, *Roof Crush Resistance.* The commenter stated that the ESC benefits assessment is incomplete because it does not discuss how some unknown portion of fatalities due to roof crush will not occur as a result of ESC intervention to keep the vehicle on the road (*i.e.*, by preventing the rollover crash entirely), and it makes essentially the same point regarding the roof crush NPRM.

The agency agrees that the ESC rule would impact the agency's rulemaking to amend FMVSS No. 216, *Roof Crush Resistance.* The benefits estimated in the PRIA for FMVSS No. 216, which accompanied the NPRM published on August 23, 2005 (70 FR 49223), reflect the impacts of ESC penetration into the fleet at that time. As a general matter, the impact of ESC on FMVSS No. 216 should be addressed in the regulatory analyses for FMVSS No. 216 rather than in the ESC rule. Generally, the agency's approach for estimating the actual benefits of any rulemaking is to adjust the benefits of a later rule to take into account the impacts of earlier rules. Therefore, for the ESC rulemaking, the PRIA and this FRIA estimated the overall benefits of the ESC rule and only address the impacts of prior rulemakings on this current rule. The impact of ESC on other future rulemakings would be addressed in those future rules respectively. The benefits of future rules, including the roof crush rulemaking, will reflect the installation of ESC in the vehicle fleet.

(c) Need for Common Terminology

According to Consumers Union, vehicle manufacturers currently utilize a variety of acronyms and proprietary trade names to identify their ESC systems, which in turn make it more difficult for consumers to know what to ask for when shopping for a vehicle. To limit consumer confusion, Consumers Union urged NHTSA to require uniform terminology for how ESC systems are identified, so as to facilitate vehicle-to-vehicle comparisons. The organization recommended use of the nomenclature ''ESC'' and the term ''Electronic Stability Control,'' which presumably already have broad consumer recognition. A similar comment was provided by Mr. Petkun. These commenters also argued that the agency should require the automobile industry and dealerships to provide training for sales staff so that they may better educate and more accurately advise potential buyers about the value of an ESC system.

The agency appreciates the importance of providing consumers with clear information regarding vehicle safety features to use when deciding which vehicle to purchase, because we believe that such information serves a safety need (consistent with the agency's motor vehicle information mandate under 49 U.S.C. Chapter 323, *Consumer Information*). However, we do not believe it is necessary to pursue the use of common terminology for ESC, for the following reasons. The primary concern engendering calls for common terminology involved a consumer's ability to know whether a given vehicle is equipped with ESC or some other similar-sounding device (*e.g.*, a manufacturer's name for traction control), but that concern has essentially been eliminated by this final rule, which mandates installation of a compliant ESC system on all light vehicles by the end of the phase-in period. Absent that concern, there is no need for NHTSA to dictate how companies market their products.

2. The Definition of ''ESC System'' as the Basis of the Standard

As noted above, the NPRM proposed to require installation of an ESC system

[40] 70 FR 49223 (August 23, 2005).

that meets the definition contained in paragraph S4 of the standard, as well as the requirements of S5.1, *Required Equipment.* The proposed definition of ''ESC System'' specified certain features that must be present on that equipment, including that it be capable of applying all four brakes individually and have a computer using a closed-loop algorithm to limit vehicle oversteer and to limit vehicle understeer when appropriate. In addition, the system must have a means to determine the vehicle's yaw rate and to estimate its side slip, as well as a means to monitor driver steering inputs. Furthermore, the ESC system must be operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC or the vehicle is below a low speed threshold where loss of control is unlikely, and it must remain operational when the antilock brake system or traction control system is activated. The ESC system must also meet the proposed performance requirements for lateral stability and vehicle responsiveness (*see* S5.2).

BorgWarner Torq Transfer Systems, Inc. (BorgWarner) stated that the proposed standard should not mandate a specific solution in terms of how an ESC system would operate (*i.e.*, requiring a brake-base system), but instead it should adopt a performance standard that would encourage development of new and potentially improved technologies, ones which may provide more benefits and/or be more cost-effective than brake-based ESC systems. The commenter stated that it is ultimately the forces at the road/tire interface that are adjusted by the ESC, regardless of how that is accomplished. Accordingly, BorgWarner stated its opposition to the definition of ''ESC System'' as the basis of the standard because ''* * * other systems such as effective design of suspension and steering geometry, active steering, active suspension, AWD active yaw control, torque vectoring yaw control, [and] electronically controlled axle differentials may increase the vehicle's stability threshold such that loss of control is not imminent within the scope of the proposed testing procedure.''

Delphi Corporation (Delphi) stated that there are currently various alternative technologies in various stages of development that may substitute for brake-based ESC systems. According to the commenter, these include active steering systems (Active Front Steer, Active Rear Steer, Steer by Wire, Electric Power Steering), active drivetrains (Active Differentials, Electronic Limited Slip Differentials, Electric Motor/Generator Devices for Propulsion/Braking), and active suspensions (Active Stabilizer Bars, Active Dampers, Active Springs). Delphi added that while brake-based ESC systems are usually restricted to limit-handling conditions, other technologies (such as those mentioned above) can operate across a range of linear-handling to limit-handling (*i.e.*, nonlinear-handling) conditions.[41] The commenter stated that alternative technologies such as Active Front Steer and Active Rear Steer may actually prevent the vehicle's tires from reaching total saturation in the first place, thereby avoiding unstable and unresponsive situations.

Delphi also stated that systems using a combination of steering and braking actuation are more responsive and are not necessarily more objectionable to drivers because they are more predictive in their operation. Accordingly, Delphi recommended modifying the ESC definition in the regulatory text to permit any actuator device that can influence the tire/road forces to achieve improvements in vehicle stability and responsiveness.[42]

RLP Engineering expressed concern that the NPRM's ''equipment requirements'' (*i.e.*, definition of an ''ESC system'') is based upon current component technology and methodology, which could become outdated. Instead of specifying components, the commenter recommended that the agency state certain objectives and required outcomes, namely requiring means and methods of detecting impending vehicle instability and subsequent means and methods for actively engaging appropriate countermeasures. RLP Engineering argued that such an approach would allow for advancement in the state of the art and elimination of obsolete vehicle componentry (with the potential for cost reduction).

According to the Alliance of Automobile Manufacturers (Alliance) and the Association of International Automobile Manufacturers (AIAM), for some electric or hybrid vehicles, the industry expects that the appropriate ESC braking torques could be provided directly through the vehicle's propulsion system (regenerative braking) without the need to apply the friction brake, as done by current ESC systems. The commenters stated that such systems would potentially provide enhanced safety benefits in terms of more rapid and precise applied braking intervention, as well as longer service life for the vehicle's friction brakes.[43]

After careful consideration of the comments, we have decided to retain the approach set forth in the NPRM (with certain modifications), which would make the requirements associated with the definition of ''ESC System'' the primary basis of the standard. Our reasoning for this decision is as follows.

The agency's intention in the context of this ESC rulemaking has been to spread the proven safety benefits of current ESC systems across the light vehicle fleet. Available information shows that current brake-based ESC systems are effective and meet the need for motor vehicle safety. The agency is not aware of and commenters have not provided any information to demonstrate the efficacy of the ESC-related technologies specified in their comments as an alternative to brake-based ESC systems.

Furthermore, it is possible for a vehicle without ESC to be optimized to avoid spin-out in the narrowly defined conditions of the ESC oversteer intervention test (especially if the standard is silent on understeer) but to lack the advantages of ESC under other conditions. The agency has determined that it is not currently feasible to develop a comprehensive battery of tests that could substitute for the knowledge of what equipment constitutes ESC, and it remains to be seen if such approach

[41] ''Linear-handling'' describes the conditions that average drivers usually face. Drivers are accustomed to a range of lateral acceleration in which a given steering wheel movement produces a proportional change in the vehicle's heading, so that one knows with some degree of certainty where the vehicle will go when the wheel is turned a certain amount.

''Nonlinear-handling'' is at the edge of, and beyond, the range of lateral acceleration to which drivers are normally accustomed (*i.e.*, above about one-half ''g'' on dry pavement for ordinary vehicles). In such situations, the relationship between the driver's steering input and the vehicle's response changes, and the lag time of the vehicle's response can lengthen.

[42] Specifically, the commenter suggested modifying paragraphs S4 and S5.1.1 of the proposed standard to read as follows:

S4 Definitions (1) ''* * * augments vehicle directional stability by applying and adjusting the wheel forces to induce correcting yaw torques to a vehicle;''

S5.1.1 ''Is capable of *dynamically adjusting all four wheel forces* and has a control algorithm that utilizes this capability.''

[43] In order to accommodate such technology, the Alliance/AIAM recommended modifying S4 (definition of ''ESC system'') and S5.1.1 of the proposal to read as follows:

S4, *Electronic Stability Control System or ESC System* * * *

(1) That augments vehicle directional stability by applying and adjusting vehicle brake *torques* individually to induce a correcting yaw *moment* to a vehicle.

S5.1.1 Is capable of applying brake *torques* individually to *all four wheels* and has a control algorithm that utilizes this capability.

would ever be practical to set a purely performance-based standard that would ensure that manufacturers provide at least current ESC systems. Therefore, we have concluded that the standard's definition of ''ESC System'' is necessary in order to ensure that light vehicles have the attributes of ESC systems that produced the large reduction of single-vehicle crashes and rollovers in our crash data study (as discussed in detail in Section II.D). We note that a similar approach of defining heavy truck ABS, rather than depending solely on performance requirements, has been successful under FMVSS No. 121, Air Brake Systems. The following discussion explains the identified obstacles to a strictly performance-based approach.

Among the challenges associated with developing a performance test for ESC, the agency notes that manufacturers develop ESC algorithms using tests whose conditions are generally not repeatable (*e.g.*, icy surfaces which change by the minute, wet/slippery surfaces which are not repeatable day-to-day) and through simulation. Manufacturers also use hundreds of conditions requiring weeks of testing for a given vehicle. However, it is not practicable to use these approaches as part of a safety standard. Furthermore, the agency cannot use subjective tests to determine compliance with a safety standard.

It is possible to overcome these limitations by adopting the standard's definition of ''ESC System,'' which is based on a Society of Automotive Engineers definition of what ESC is, and which includes those elements that account for the cost of those systems. There is no reason to believe that manufacturers will incur all the costs of the ESC equipment and capabilities required by the standard's definition and then just program the system to achieve limited operation restricted to the test conditions of the standard. The standard's definitional requirement for ''ESC System'' requires, at a minimum, the equipment and capabilities of existing ESC system designs. This translates into the substantial fatality and injury benefits provided by existing ESC systems.

Without the definition of ''ESC System,'' it would not be feasible to comprehensively assess the operating range of resulting devices, particularly for understeer intervention, that might be installed in compliance with the safety standards. If manufacturers were to only optimize the vehicle so as to pass only a few highly-defined tests, there public would not receive the full safety benefits provided by current ESC systems.[44]

Under this topic, we also note the comment from the Alliance/AIAM about test variability (in the responsiveness portion of the oversteer intervention test). Even under test conditions chosen for high repeatability, these commenters maintain that the performance requirements must be decreased to allow a larger margin of compliance. Such margins of compliance would make a very weak standard if based solely on tests that would be considerably less repeatable than those we are using.

The Delphi comment also lists a number of systems and components that can influence wheel forces and suggests that it should be permissible for the definition of ESC to be satisfied by systems that can generate wheel force (*i.e.*, a requirement more open than compelling a system that must operate through brake forces). However, the commenter did not provide any data to show the effectiveness of such systems, as would demonstrate that they meet the need for motor vehicle safety and that it would be appropriate to substitute them for proven brake-based ESC systems. We believe there are good reasons for the safety standard at least initially to be based on braking forces (noting that we have changed the definition to include all ''braking'' torques at the wheels (*i.e.*, regenerative braking by an electric motor as well as the action of friction brakes)). While some of the devices mentioned by BorgWarner and Delphi could create yaw moments (for ESC interventions) by driving torques,[45] yaw moments created by braking torques have an advantage in critical situations because they also cause the vehicle to slow down.

These commenters also mention a number of steering-related concepts as an alternative means of meeting the standard's requirements. Specifically, Delphi stated that active steering interventions (in a vehicle that combines steering and braking in its ESC) could operate at driving conditions well below critical levels of tire saturation (where steering interventions lose their power) and produce a more responsive vehicle. While active steering may be useful in certain situations, the steering interventions may not be very helpful at or near the limit of traction, which is arguably the critical situation at the heart of this rulemaking. Again, braking forces have an advantage over steering forces because they can create a more powerful yaw intervention when the vehicle is at the limit of traction.[46]

We understand that manufacturers of a small number of luxury cars are beginning to add active steering to ESC, as described by Delphi, which are very refined vehicle systems that are carefully designed so as to not annoy their drivers. We clarify that the standard in no way prohibits the addition of refinements to vehicles that retain the ability to create yaw moments with brake torques when necessary. The vehicles in question retain the brake-based ESC as the backstop for stability, because the brake interventions which are more noticeable to drivers retain their power in situations where the transparent steering interventions might not be powerful enough. Without data to assess the effectiveness of these potential alternative operating features for ESC (which commenters did not provide), we have decided that it would not be appropriate at this time to abandon the requirement for brake torque-based systems which have proven benefits, in favor of concepts that have not yet demonstrated any safety benefits, much less the enormous benefits associated with current brake torque-based ESC systems.

We acknowledge that in requiring ESC as it now exists and has proven to be beneficial, we may be indirectly impacting hypothetical future technological innovations. We have to balance the benefits of saving thousands of lives a year by requiring ESC systems with the capabilities of current ESC systems, against the loss of savings in the future provided by some even more advanced ESC technologies. In this case, we believe that the opportunity to save this many lives must be selected. Should new advances lead to forms of ESC different than those currently required by this standard, interested parties can petition the agency to modify the regulation. We also note that

[44] The U.S. Environmental Protection Agency (EPA) experienced problems with heavy duty diesel manufacturers' production of engines that met EPA standards during laboratory testing under EPA procedures but were turned off under highway driving conditions. On October 22, 1998, the Department of Justice and EPA announced a settlement with seven major diesel engine manufacturers. Accordingly, we do not believe that the industry's ability to circumvent the requirements of the standard is a theoretical one, as would permit us to forgo a definition for ''ESC System.''

[45] ''Driving torque'' is a force applied by the engine through the drive train in order to make a particular wheel turn faster than the others—similar to ''braking torques'' which brakes one wheel to make it turn slower than the others. Either force can be utilized by an ESC system to change the heading of the vehicle, although braking torque has the added benefit of helping slow the vehicle down.

[46] Liebemann *et al.*, Safety and Performance Enhancement: The Bosch Electronic Stability Control (ESP), 2005 ESC Conference.

the vehicle manufacturers who are the directly regulated parties have not opposed using the definition for ''ESC System'' as the primary requirement of the standard, and some have actively supported it. We interpret this to mean that the vehicle manufacturers are not aware of any feasible alternative approach for providing efficacious electronic stability control in the near future, other than the approach described in the definition.

3. Stringency of the Standard

The NPRM proposed in S4 to require installation of an ESC system that: (1) Is capable of applying all four brakes individually and has a control algorithm that utilizes this capability; (2) is operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC or the vehicle is below a low speed threshold where loss of control is unlikely, and (3) remains operational when the antilock brake system or traction control system is activated (*see* S5.1). The ESC system also would have to meet the proposed performance requirements for lateral stability and vehicle responsiveness (*see* S5.2).

Advocates expressed strong support for a mandate that ESC be provided on all light vehicles, but it urged the agency to adopt a more stringent standard in the final rule. Specifically, Advocates argued that the proposed requirements for ESC intervention to increase lateral stability and to restore proper directional heading are sub-optimal. The commenter also objected to what it characterized as the ''minimal standard'' that would be set by the proposal, one which effectively accommodates the lowest level of all existing ESC system designs and performance, rather than pushing for state-of-the-art technology. According to the commenter, the proposal would grandfather in all existing ESC designs, even though not all ESC systems have the same level of capabilities.

Advocates also requested that the rule require certain operating functions present on many current ESC systems (*e.g.*, automatic speed reduction achieved by automatic braking and engine de-powering/engine control, traction control, automatic steering, roll stability control), even though the agency based its benefits assessment in the PRIA by ''piggybacking'' onto these more robust ESC systems. The commenter stated that these additional features, which the agency suggests have some positive safety value, make some unknown (*i.e.*, unquantified) contribution to the anticipated reduction in deaths, injuries, and crash severity associated with the ESC rulemaking. Advocates added that the PRIA's estimated benefits may be inflated because, given the more truncated requirements of the proposed standard, there is no assurance that manufacturers will continue to install more complex ESC systems, a result that would detract from ESC as an advanced safety technology.

In addition, Advocates urged that the agency continue its efforts to reconcile ESC intervention with effective roll stability control systems, characterizing the latter as the only means to directly intervene to prevent imminent rollover (as compared to ESC's indirect contributions through oversteer and understeer intervention). Although the commenter seemed to acknowledge that incorporation of roll stability control requirements may not be possible immediately, it stated that the agency should eventually include performance specifications for this function as part of FMVSS No. 126.

Consumers Union expressed general support for the ESC rulemaking, stating that stability control systems should be standard equipment on all vehicles, especially sport utility vehicles (SUVs). It further stated that, since 1998, it has conducted tests on 179 vehicles equipped with ESC systems, but it has found considerable variability in the level of performance across the systems provided. The commenter stated that better ESC systems act decisively but not prematurely, whereas other systems can be slow to react, help only in certain situations, and intervene too frequently during normal driving. Accordingly, Consumers Union recommended that NHTSA's standard should be modeled after the ESC systems found to be ''best performers,'' which it characterized as ones that are intrusive and very evident in ''at the limit'' testing (*i.e.*, at the point at which loss of vehicle control may be imminent), but less so during routine driving.

In addition, Consumers Union stated that ESC calibration should be adjusted to match the type of vehicle for which the system has been developed so that it complements vehicle and driver characteristics (*e.g.*, a more intrusive system for a minivan than for a sports sedan).

Specifically, Consumers Union stated that the NPRM's proposed steering response 1.07 seconds after the initiation of steering (minimum of 6 feet from the center line) is not aggressive enough, and accordingly, the commenter reasoned that it could allow manufacturers to fit low grip tires and slow steering to improve performance under the standard's test procedures. Consumers Union expressed concern that manufacturers may seek to reduce costs by developing cheaper, less sophisticated ESC systems which may pass all the requirements of the standard, but which may be relatively less effective in terms of saving lives.

Public Citizen commented that the agency's ESC proposal is incomplete because it does not deal with the full set of technologies which make up many current ESC systems, instead proposing a more limited yaw stability standard. (Public Citizen also argued that the agency assessed benefits in the PRIA on these more advanced ESC systems). For example, Public Citizen noted that the Alliance of Automobile Manufacturers made a presentation to NHTSA in which it described a number of current features [47] on ESC systems, including yaw stability,[48] traction control, ABS,[49] brake assist, active steering, body roll control,[50] vehicle roll stability control, corner brake control,[51] and electronic damping control.[52] Public Citizen specifically asked why the agency considered traction control to be only a ''convenience feature.''

According to Public Citizen, the ESC equipment requirements are already out-of-date and will be obsolete by the time a final rule is published. The commenter argued that the proposal would mislead consumers into thinking that they are purchasing a true ESC system using the latest technology. Public Citizen stated that because the agency's proposal would accept the

[47] We note that many of the ESC-related features cited by the commenters may serve similar or complementary functions, which may vary to some extent from vehicle to vehicle. However, to the extent possible, we have tried to generally explain our understanding of these technologies either in footnotes or the textual discussion of this document.

[48] ''Yaw stability'' means an electronic stability control system of the type required by new FMVSS No. 126 and explained in section II.D of this preamble.

[49] ''ABS'' means anti-lock braking system, a system that controls rotational wheel slip in braking by sensing individual wheel speeds and adjusting brake actuating forces in response to those signals. ABS provides many of the components necessary for ESC.

[50] ''Body roll control'' is a utilization of electronic damping control to stiffen the body roll resistance in a curve to provide a more level ride.

[51] ''Corner brake control'' (CBC) is designed to improve vehicle stability *during a braking event* by adjusting the brake line pressure applied to the individual wheels. It is a refinement of ABS with some similarity to ESC, except that CBC intervention requires the driver to apply force to the brake pedal, whereas ESC interventions occur regardless of whether the driver has applied the brakes.

[52] ''Electronic damping control'' is an electronic system of shock absorbers having electrically-controllable damping rates (stiffness) and a control module to operate them as a system.

least extensive of current ESC technologies, it would merely ratify the *status quo* and not ''reduce'' rollover deaths as Congress required under SAFETEA–LU. The organization stated that the agency cannot rely upon an unenforceable expectation that vehicle manufacturers will continue to provide advanced ESC systems, and it expressed concern that some vehicle manufacturers might actually strip out certain ESC-related features on low-cost vehicles, thereby actually degrading vehicle safety. In contrast, Public Citizen argued that the agency should exert a ''technology forcing'' influence with respect to vehicle safety improvements. Thus, Public Citizen argued that the ESC proposal would not go far enough to improve vehicle safety.

Public Citizen stated that the two studies of the effectiveness of ESC system prepared by NHTSA, which used Fatality Analysis Reporting System (FARS) data for 1997–2004 and State registration data for 1997–2003, surveyed a time period during which ESC technology was a relatively new technology. As a result, Public Citizen argued that those studies were confounded by small sample sizes and that the results, therefore, make it nearly impossible to support statistically significant claims regarding specific ESC configurations or to separate out the components which the agency decided not to include in its proposal. Again, Public Citizen commented that the PRIA for the ESC NPRM counts the benefits of more extensive ESC technologies, without counting the full costs for those systems. It argued that more properly, the agency should have measured the benefit of a yaw control system, which is more in line with the requirements of the agency's proposal.

In response to these comments requesting that the agency require additional features found on some ESC systems, we have decided to incorporate a requirement for ESC engine control but not to require other system components at this time. Although discussed in detail immediately below, the following summarizes our rationale for this decision.

As a preliminary matter, we find no merit in Public Citizen's arguments that the NPRM's proposed ESC requirements fail to satisfy the requirements of the statutory mandate under SAFETEA–LU. As discussed previously, the statute provided the agency with discretion to adopt performance criteria for technologies consistent with stability enhancing technologies. Our research identified ESC systems as the most effective of these technologies, and our proposal was based upon the definition for ''ESC System'' promulgated by the Society of Automotive Engineers, a group which is broadly representative of industry experts. Furthermore, the Verband der Automobilindustrie (VDA), an association of German vehicle manufacturers, acknowledged that NHTSA's definition corresponds to modern ''state-of-the-art'' ESC systems. The proposal also established performance criteria in the form of tests for lateral stability and vehicle responsiveness (*see* Section IV.C.4 and the Appendix for a discussion of the agency's efforts to develop a performance test for understeer). Accordingly, this final rule meets the requirements of SAFETEA–LU.

As discussed above, under 49 U.S.C. 30111, a safety standard must be practicable, meet the need for motor vehicle safety, and be stated in objective terms; in setting the standard, relevant, available motor vehicle safety information must be considered. With the exception of engine control, all of the other ESC-related components lack supporting data to assess their effectiveness and to determine whether such technologies meet the need for safety. The commonality of design for ESC systems that were represented in the agency's crash data study focused on individual brake application and engine control, and we note that in its comments, VDA stated that the agency's proposed definition for ''ESC system'' captures the state-of-the-art. Again, even though certain later ESC designs incorporate some additional features, it was not possible to determine the safety benefits, if any, of these features because these features were not available on any of the ESC-equipped vehicles in the crash data study. Also, some of those features are directed at comfort and convenience rather than safety (as explained below). We do not believe that there is good reason to postpone the proven life-saving benefits of basic ESC systems until such time as the agency can conduct the necessary research to assess the panoply of related components. Accordingly, we believe that it is not necessary to specify additional components as part of the standard's definition for ''ESC system,'' but instead, we leave it to the discretion of vehicle manufacturers to tailor the features of their individual ESC systems to the needs of a given vehicle. We note that the rule does not limit manufacturers' ability to develop, install, and advertise stability control systems that go beyond its requirements.

At the time of the agency's analysis, the U.S. crash data available to NHTSA to evaluate the benefit of ESC did not include vehicles newer than 2003. However, the ESC systems of the vehicles that were part of the agency's analysis proved extraordinarily effective, reducing single-vehicle crashes from 34 to 59 percent and reducing rollover in single-vehicle crashes (the crash type leading to over 80 percent of rollovers) from 71 to 84 percent. The results were statistically significant and in agreement with studies by other parties worldwide as cited in the NPRM. The rule requires ESC systems at least as capable as those that produced this extremely high level of demonstrated, real-world benefits at a reasonable cost to the public. It does not simply ''grandfather'' all existing ESC systems, and the performance criteria were developed using contemporary new vehicles produced in 2005 and 2006. The basis of the standard is a definition of ESC that specifically excludes existing two-wheel ESC systems because they are not capable of understeer invention or four-wheel automatic braking during an intervention, even though these systems also produced substantial (but lesser) benefits.

Engine Control

''Engine control'' means the ability of an ESC system to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle.

The commenters argued that the benefit assessment included the contributions of ESC engine control. We have considered this comment and agree that ESC engine control was a feature on most vehicles in the crash data analysis and on all the vehicles in the ESC cost study. Because ESC engine control is likely to have influenced the estimated benefits reported in the PRIA, we are amending the ''ESC System'' definition in the standard to include a requirement for engine control based on the definition contained in SAE Surface Vehicle Information Report J2564:

> The system must have an algorithm to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle.

Other Features

The commenters also claimed that the benefit assessment included the contributions of such features as automatic braking, traction control, active steering, brake assist, and roll stability control and that the standard would not achieve the expected benefits with the required ESC systems. However, we have determined that it is not necessary to make additional modifications related to the other features cited by commenters. We have

also decided that the commenters' recommendations regarding the test criteria are likewise unnecessary. We address each of these topics in turn below.

Automatic Braking

''Automatic braking'' involves the application of other brakes in addition to the brake required to generate the necessary yaw torque (as described in the explanation of ESC operation in Section II.D), along with a heavier application at the initial brake location to maintain the yaw torque.

A requirement for automatic braking would be redundant, because that feature is simply the application of other brakes in addition to the brake already required to generate the necessary yaw torque. All of the hardware required for this operation is already included in the definition of ''ESC System.'' Automatic braking is just one of the strategies invoked by the basic operating software of ESC, but the circumstances when it is called for and the severity of the braking are determined when ESC is tuned for a specific vehicle. Making ESC a requirement will not reduce the use of automatic braking. If anything, use of ESC on a much greater number of vehicles will lead to more sophisticated basic software being delivered to vehicle manufacturers by suppliers.

Traction Control

''Traction control'' reduces engine power and applies braking to a spinning drive wheel in order to transfer torque to the other drive wheel on the axle.

The commenters are mistaken in attributing ESC benefits to traction control. Traction control provides mobility in starting on slippery surfaces, but it offers no improvement in lateral stability beyond that already provided by ESC with engine control. ESC already reduces engine power when lateral instability is detected, and there is no further assistance that traction control could add.

Active Steering

''Active steering'' is a computer-controlled function that allows steering of the front axle (and possibly the rear) independent of driver input to maintain stability. As mentioned in Section IV.C2 above, active steering interventions are not as powerful as ESC brake interventions in limit situations. (Our observations lead us to believe that active steering is being used to delay the onset of ESC interventions as a driver satisfaction feature.)

Active steering did not affect our estimation of benefits because none of the vehicles in our data study were equipped with that feature. Also, only one of the new vehicles in our research to develop an oversteer test had this recently introduced feature. This vehicle was also the only new vehicle in our research that failed the oversteer test criteria. Ironically, this vehicle was equipped with more cutting edge technology than the rest of the new test vehicles.

Brake Assist

''Brake assist'' causes a maximum brake application if the driver presses the brake pedal very quickly in a manner indicative of panic braking, even if the driver is hesitant to brake hard.

Similarly, the benefits we have attributed to ESC based upon our research have nothing to do with brake assist. It is a feature that predates ESC on the European vehicles in our test group that had it. Brake assist is not part of the ESC system; it does not affect yaw stability, and it was present on both the non-ESC control vehicles and the ESC-equipped vehicles in our study. NHTSA is examining the merits of brake assist separately from its ESC research.

Roll Stability Control

''Roll stability control'' senses the vehicle's body roll angle and applies high brake force to the outside front wheel to straighten the vehicle's path and reduce lateral acceleration if the roll angle indicates probable tip-up.

Roll stability control was not responsible for the huge reduction in rollovers in single-vehicle crashes of 71 percent for cars and 84 percent for SUVs. None of the vehicles in the crash data study had roll stability control. The crash data study was a study of the benefits of yaw stability control. The first vehicle with roll stability control was the 2003 Volvo XC90 (cited by Public Citizen) which was not in our data study because it was a new vehicle without a non-ESC version that could serve as a control vehicle. It is also a low-production-volume vehicle that would have produced very few crash counts in the 1997–2003 crash data of our study. A similar roll stability control system was used on high-volume Ford Explorers starting in 2005, and eventually there will be enough Explorer data to evaluate the effectiveness of roll stability control. The agency will track the rollover rate of vehicles equipped with roll stability control through analysis of State-generated crash data and evaluate its effectiveness once a sufficient sample size becomes available (*i.e.*, approximately three to four years).

However, because our data study showed yaw stability control reducing rollovers of SUVs by 84% by reducing and mitigating road departures, and because on-road untripped rollovers are much less common events, the target population of crashes that roll stability control could possibly prevent may be very small. If and when roll stability control can be shown to be cost-effective, then it could be a candidate for inclusion in the standard in subsequent rulemaking.

In addition, the countermeasure of roll stability control systems is at least theoretically not benign. It reduces lateral acceleration by turning the vehicle away from the direction the driver is steering for at least a short distance. As noted previously, several individual commenters expressed strong dissatisfaction that we were proposing a mandatory safety device in which the driver yields at least some measure of vehicle control to a computer. This was an inaccurate criticism of the pure yaw stability control system we proposed, because such system would help the vehicle go in the direction the driver is steering. ESC engine control does require the system to override the driver's throttle control which was a specific complaint of some commenters. However, requiring systems that actually countermand the driver's steering control requires a high level of justification, a hurdle which roll stability control cannot yet surmount due to the newness of the technology and the corresponding lack of available data.

Test Criteria

In terms of future manufacturer actions, we note that Consumers Union criticized the test criteria as too weak to ensure that manufacturers will not create cheaper, less sophisticated systems that rely on poor tire traction or a reduced steering ratio to meet the performance test. To preclude such actions, we established criteria for vehicle responsiveness as well as lateral stability (*see* discussion under Section IV.C.5).

Also, we do not agree with Consumers Union's assertions that the standard's test criteria are weak. The commenters offered no recommendations in terms of how test severity could be improved. As carefully explained in the NPRM, the agency knows of no test more suited for quantifying an ESC system's ability to mitigate excessive oversteer while simultaneously facilitating the assessment of lateral displacement capability. Every vehicle we have evaluated using the lateral stability performance criteria has demonstrated

profound differences between tests performed with fully enabled and fully disabled ESC. Thus, this test clearly distinguishes vehicles with properly tuned ESC systems from comparable vehicles not so equipped.

4. Understeer Requirements

Under the proposed requirement that vehicles be equipped with ESC systems meeting the proposed definition of ''ESC System,'' a system must be ''computer controlled with a computer using a closed-loop algorithm to limit vehicle oversteer and to *limit vehicle understeer when appropriate*'' (emphasis added). The NPRM did not propose a separate performance requirement for understeer. (All current ESC designs that NHTSA has studied appear to already include provisions for mitigating excessive understeer.)

BorgWarner suggested that it is inconsistent for the ESC proposal to state that the system must meet an understeer requirement without defining a test or set of criteria to objectively measure compliance. Accordingly, BorgWarner stated that the agency should either include a performance requirement for understeer or eliminate the understeer requirement. The commenter suggested that the agency could amend the standard at a later date, once the parameters of the understeer performance requirement and associated test procedure have been developed.

Delphi stated that while it supports the eventual incorporation of an understeer performance requirement into the ESC standard, the commenter believes that adoption of the agency's proposal would yield significant safety benefits and that the agency should proceed quickly to a final rule. Accordingly, Delphi suggested leaving an understeer performance requirement for a separate future rulemaking. Delphi reasoned that, ultimately, an ESC system facing an extreme understeer situation must avoid overreaction that produces oversteer (excess yaw and side slip, which may lead to off-road tripped rollover) or produces excessive lateral acceleration that may induce on-road untripped rollover.

Advocates faulted the NPRM, on both safety and legal grounds, for not proposing specific performance requirements for ESC understeer intervention. The commenter argued that because the agency has identified understeer intervention as one of the necessary elements for an ESC system, it is obligated to establish performance requirements (including appropriate test procedures), without which the understeer requirement is unenforceable. Otherwise, the commenter stated that some manufacturers might supply ESC systems that do not adequately compensate for understeer loss of control circumstances, arguing that there are already vast differences in tuning among various ESC systems. Advocates predicted that failure of the agency to specify understeer performance requirements would maintain or expand differences between ESC performance from one vehicle make or model to another and could cause the standard to forgo prevention of additional fatalities and injuries. Furthermore, Advocates argued that since SAFETEA–LU directs the agency to establish performance *criteria* for stability enhancing technologies (*i.e.*, noting the plural nature of that statutory provision, which Advocates suggested requires something more than an oversteer *criterion* alone), including the understeer component that the agency has determined to be a necessary part of ESC systems from a safety perspective is also required from a legal perspective.

Consumers Union expressed concern that the agency's proposal does not assess an ESC-equipped vehicle's ability to reduce understeer through the standard's test procedures. The commenter inquired as to what percentage of the fatalities to be addressed by the standard are caused by understeer as opposed to oversteer, but the organization stated that it nevertheless believes that understeer is an issue that should be addressed by the agency.

IIHS expressed its agreement with the agency's approach to provide both a definition of an ESC system and a performance requirement for such systems. However, because the proposed ESC performance test does not fully address understeer, IIHS cautioned the agency to monitor the performance of ESC-equipped vehicles to ensure that they continue to be effective.

Public Citizen also objected to the omission of a performance test for understeer intervention, stating that the agency has not addressed the understeer performance criteria used by industry or the potential loss of benefits that would be attributed to the failure to develop understeer performance criteria. According to Public Citizen, the agency should explain on the record the available test procedures for understeer that it examined and explain why those procedures are inadequate. The commenter stated that the agency itself has identified understeer intervention as an important component of the ESC system, but without any performance criteria, neither the agency nor the consumer will have any sense of the effectiveness of the system in that regard. Accordingly, the commenter argued that the NPRM is inadequate to meaningfully address rollover fatalities as required by the statute, so it demanded a supplemental notice of proposed rulemaking (SNPRM) to correct these perceived deficiencies.

Although Mr. Sparhawk agreed that ESC systems are likely to provide substantial benefits, he raised two issues for resolution in the final rule. Mr. Sparhawk argued that NHTSA has not established an adequate record to justify adoption of an equipment requirement or to explain why development of a performance test for understeer was too difficult and too cumbersome for the agency and the regulated community. The commenter stated that the justification provided by the agency for not including an understeer test as part of the ESC proposal requires further factual and analytical development.

Mr. Sparhawk questioned how, without an understeer test, the agency can determine whether that aspect of the ESC system has the desired level of functionality or whether the system will always function as expected. (The commenter cited NHTSA's June 2003 report titled ''Initiatives to Address the Mitigation of Vehicle Rollover,'' which noted system-to-system variability in terms of ESC performance.)

The commenter also stated that numerous understeer tests have been developed in Asia, Europe, and North America, so the record should explain that these tests do exist, why they are inadequate, and the urgent need to move to a final rule even before the understeer issue can be fully resolved. Otherwise, one might ask why the agency simply did not wait for additional data on this key element before proceeding with its rulemaking. In addition, the commenter asked the agency to explain the factors, elements, or processes used by the agency to determine when any battery of tests is too difficult for incorporation in a regulation. Mr. Sparhawk also argued that there is no provision in the statute permitting the agency to consider burden on the agency or the regulated community as a factor when prescribing a safety standard.

As background for the reader, all light vehicles (including passenger cars, pickups, vans, minivans, crossovers, and sport utility vehicles) are designed to understeer[53] in the linear range of

[53] Although Appendix 1 provides a technical definition of ''understeer,'' in lay terms it is probably best described as the normal condition of

Continued

lateral acceleration,[54] although operational factors such as loading, tire inflation pressure, and so forth can in rare situations make them oversteer in use. This is a fundamental design characteristic. Understeer provides a valuable, and benign, way for the vehicle to inform the driver of how the available roadway friction is being utilized, insofar as the driver can ''feel'' the response of the vehicle to the road as the driver turns the steering wheel. Multiple tests have been developed to quantify linear-range understeer objectively, including SAE J266, ''Steady-State Directional Control Test Procedures for Passenger Cars and Light Trucks,'' and ISO 4138, ''Road vehicles—Steady state circular test procedure.'' These tests help vehicle manufacturers design their vehicles with an appropriate amount of understeer for normal linear-range driving conditions. Tests such SAE J266 and ISO 4138 simply measure the small constant reduction in vehicle turning (in comparison to the geometric ideal for a given steering angle and wheelbase) that characterizes linear range understeer at relatively low levels of lateral acceleration. This is much different from limit understeer in loss-of-control situations where even large increases in steering to avoid an obstacle create little or no effect on vehicle turning.

In the linear range of handling, ESC should never activate. ESC interventions occur when the driver's intended path (calculated by the ESC control algorithms using a constant linear range understeer gradient) differs from the actual path of the vehicle as measured by ESC sensors. Since this does not occur while driving in the linear range, ESC intervention will not occur. Therefore, ESC has no effect upon the linear-range understeer of a vehicle.

Our response to the comments is explained in more detail in Appendix 1, below. In overview, the agency recognizes that understeer intervention is one of the core functions of an ESC system, a feature common to all current production systems. The agency examined the available research for a potential ESC understeer test, but such research did not address understeer in the context of loss-of-control situations. Understeer tests in the literature (such as SAE J266 and ISO 4138) focus on linear range understeer properties and are not relevant to the operation of ESC, as explained above.

Because there are no suitable tests of limit understeer performance in existence, NHTSA undertook its own preliminary research efforts related to understeer. However, the complexity of such research would require several years of additional work before any conclusions could be reached regarding an ESC understeer performance test. A principal complication is that manufacturers often program ESC systems for SUVs to avoid understeer intervention altogether on dry roads because of concern that the intervention could trigger tip-up or make the oversteer control of some vehicles less certain in high-speed situations. This common understanding of how current ESC systems operate related to understeer has also been observed in the course of NHTSA's research; this principle was discussed in the NPRM, and no commenter disagreed with this operational understanding.

We believe it would be unwise to disregard manufacturers' exercise of caution in this circumstance, particularly in view of the remarkable reduction in rollover crashes of SUVs that manufacturers have achieved with current ESC strategies. Respect for the manufacturer's discretion in understeer strategies is the reason why we added ''when appropriate'' to the NPRM's proposed requirement for understeer intervention in the ''ESC System'' definition, which was modeled on the SAE definition. As a result, tests of understeer intervention would have to be conducted on low-coefficient of friction (''low-coefficient'') surfaces.

There are two kinds of low-coefficient test surfaces: (1) Those involving water delivery to the pavement and pavement sealing compounds such as Jennite to reduce the friction of wet asphalt, and (2) those involving water delivery to inherently slick surfaces such as basalt tile pads. Repeatable pavement watering is confounded by factors like time between runs, wind, slope, temperature, and sunlight. Jennite itself is not very durable, resulting in the coefficient changing with wear. Simply wetting the same surface used for the oversteer test would not produce a surface slippery enough to ensure that SUVs would intervene in understeer. Basalt tile is extremely expensive, as evidenced by the lack of large enough basalt test pads anywhere in the country for this kind of testing. Moreover, the coefficient of friction of basalt pads is extremely low, almost as low as glare ice. Causing manufacturers to optimize understeer intervention at extremely low coefficients like this may create overly-aggressive systems that compromise oversteer control on more moderate low-coefficient surfaces. Given the practicability problems of repeatable low-coefficient testing, the need for compliance margins expressed by the Alliance (*see* Section IV.C.5) would likely result in very low criteria.

Development of specific performance criteria is also problematic. In the oversteer performance test, the difference between the maximum yaw rate achieved and the zero when the vehicle is steered straight at the end of the maneuver is large and readily obvious. In contrast, the difference between understeer and the ultimate controlled drift, which is the most any ESC system can deliver when there is simply not enough traction for the steering maneuver, is difficult to differentiate. Also, the kind of optical instrumentation that a test would use to measure possible metrics in an understeer test such as body and wheel slip angles does not function reliably for tests on wet surfaces. There is a real question whether NHTSA can ever create criteria for understeer intervention that would be both stringent enough for testing and universal enough to be applied on cars and SUVs without upsetting legitimate design compromises.

In light of the above, the agency determined that it had three available options: (1) Delay the ESC final rule until such time as the agency's research was completed and an understeer performance test could be developed; (2) drop the understeer requirement from the proposed definition of ''ESC System'' and amend the standard at a future date once an ESC performance test is developed; or (3) include a requirement for understeer as part of the definition of ''ESC System,'' along with requiring specific components that will permit the system to intervene in excessive understeer situations (*e.g.*, capability to brake at four wheels individually which is necessary for both oversteer and understeer intervention) and requiring that manufacturers make available to the agency, upon request,

most cars for everyday driving. Light vehicles are designed to be slightly understeer in normal driving situations, because being understeer provides both stability (the vehicle is not hugely affected by, *e.g.*, small gusts of wind) and lateral responsiveness (*e.g.*, the vehicle is able to respond to the driver's sudden decision to avoid an obstruction in the roadway by turning the wheel quickly).

[54] The ''linear range of lateral acceleration'' is referred to in other parts of the preamble as ''linear-handling'' and ''linear range,'' and in very basic terms describes the normal situation of everyday driving, where a given turn by the driver of the steering wheel causes an expected amount of turn of the vehicle itself, because the vehicle is operating at the traction levels to which most drivers are accustomed. As the limits of the accustomed traction levels are approached (elsewhere called ''limit-handling''), the vehicle begins to enter non-linear range, in which the driver cannot predict the movement of the vehicle given a particular turn of the steering wheel, as on a slippery road or a sharp curve, where the driver can turn the wheel a great deal and get little response from the skidding vehicle.

sufficient engineering documentation to demonstrate the ESC system's capability to limit understeer.

The agency quickly decided to eliminate the option of delaying the ESC rulemaking, because of the extremely high life-saving potential of this rulemaking. To do so would run counter to the agency's mission.

Similarly, the agency decided that eliminating the understeer requirement from the rule and deferring its adoption until the completion of future research would also run counter to safety. As discussed in Section II.D, understeer intervention is one of the key beneficial features in current ESC systems, and we did not want to set a requirement that did not ensure the substantial benefits of current ESC systems.

That left the agency with the third option (which we have retained in this final rule) of adopting an understeer requirement as part of the definition of ''ESC System,'' along with a requirement for specific equipment suitable for that purpose. Such requirement is objective in terms of explaining to manufacturers what type of performance is required and the minimal equipment necessary for that purpose. The rule also requires that the manufacturer must submit to NHTSA, upon request, the engineering documentation necessary to demonstrate the system's understeer capability (*see* S5.6).

Specifically, in order to ensure that a vehicle is equipped with an ESC system that meets the definition of ''ESC System'' under S4, NHTSA's Office of Vehicle Safety Compliance (OVSC) may ask the vehicle manufacturer to provide a system diagram that identifies all ESC components, a written explanation describing the ESC system's basic operational characteristics, and a logic diagram supporting the explanation of system operations. In addition, regarding mitigation of understeer, OVSC may request a discussion of the pertinent inputs to the vehicle computer or calculations within the computer and how its algorithm uses that information and controls ESC system hardware to limit vehicle understeer. (In appropriate cases in the context of an enforcement proceeding, NHTSA might ask for additional data, including the results of a manufacturer's understeer testing.) We note here that we anticipate that much of the above information is proprietary and would be submitted under a request for confidential treatment.

In sum, the agency believes that the above information will permit the agency to understand the operation of the ESC system and to verify that the system has the necessary hardware and logic for mitigating excessive understeer. This ensures that vehicle manufacturers are required to provide understeer intervention as a feature of the ESC systems, without delaying the life-saving benefits of the ESC rule (including those attributable to understeer intervention). In the meantime, the agency will conduct additional research in the area of ESC understeer intervention and considering taking additional action, as appropriate.

The Vehicle Safety Act requires that FMVSS be stated in objective terms. NHTSA believes that the understeer requirement is objective, even without a specific performance test. The definition of ''ESC System'' requires not only an understeer capability (part (2) of the definition), but also specific physical components that allow excessive understeer mitigation (part (1) of the definition). Based on agency evaluation of ESC-equipped vehicles so far, we have identified both the hardware and the algorithms necessary for an ESC-equipped vehicle to be able to mitigate excessive understeer, as described in S5.1 of the standard and more fully in the Appendix.

We note that in the proposed regulatory text, NHTSA defined ESC as including an algorithm that would ''limit vehicle understeer as appropriate,'' which was intended to ensure the mitigation of excessive understeer already performed by existing ESC systems when the vehicle has entered the non-linear range and to prevent any backsliding of the technology. However, based upon the concern for objectivity, we have decided to delete the words ''when appropriate'' in paragraph (2) of the definition of ''ESC System'' in S4. We believe that the provision for ESC system technical documentation contained in S5.6 provides a clearer picture as to when understeer intervention is appropriate for a given vehicle.

Thus, NHTSA plans to enforce the understeer requirement via a two part process: Ensuring that vehicles have all of the hardware needed to limit vehicle understeer (as required by FMVSS No. 126), and checking engineering documentation (*i.e.*, logic/system diagrams and other information discussed above) provided by the vehicle manufacturers upon request to show that the ESC system is capable of addressing vehicle understeer.

Regarding Consumers Union's question about what percentage of the fatalities to be addressed by the standard are caused by understeer as opposed to oversteer, we cannot quantify this from the available data. This is because it is exceedingly difficult to determine during or after an accident whether it was caused by oversteer or understeer, when both frequently occur at the same time during accidents.

In conclusion, while NHTSA would like to include a performance standard for understeer intervention in FMVSS No. 126, we do not know of any suitable performance tests for excessive understeer mitigation. We are unwilling to forgo the large safety benefits that ESC will provide to the American public in the near future just because we might, some years from now, be able to produce a more refined standard. If, in the future, we see ways to amend FMVSS No. 126 in a manner that would increase motor vehicle safety, NHTSA would consider undertaking additional rulemaking at that time.

5. Lateral Responsiveness Criteria

The NPRM proposed that under each test performed under the test conditions of S6 and the test procedure of S7.9, the vehicle would be required to satisfy the responsiveness criterion of S5.2.3 during each of those tests conducted with a steering amplitude of 180 degrees or greater. Specifically, proposed paragraph S5.2.3 provides that lateral displacement of the vehicle center of gravity with respect to its initial straight path must be at least 1.83 m (6 feet) when computed 1.07 seconds after initiation of steering. The NPRM further proposed that the computation of lateral displacement is performed using double integration with respect to time of the measurement of lateral acceleration at the vehicle center of gravity (*see* S5.2.3.1) and that time t=0 for the integration operation is the instant of steering initiation (*see* S5.2.3.2).

The VDA expressed support for the agency's proposed requirements for ''Metric Stability.'' The commenter confirmed that in similar testing by its members, measured lateral accelerations and the subsequent double integration for the lateral displacements showed similar values to those tested during the agency's development of the NPRM. It stated that its testing showed that all passenger cars reached the proposed limit of 1.83 m after 1.07 s, although SUVs were more borderline. The commenter also stated that the required lateral displacement for proposed steering wheel angles above 180 degrees was easily reachable for passenger cars, although more difficult to achieve for larger, heavier vehicles with more indirect steering ratios. According to the VDA, the accuracy of the lateral acceleration integration, up to 1.07 s after initiation of steering, is a sufficient

and reproducible measurement procedure.

The VDA supported the agency's requirement of stability criteria using yaw rate measured 1 sec and 1.75 sec after the end of steering. However, the VDA offered a recommendation regarding the proposed responsiveness test procedure. Specifically, the commenter urged the responsiveness metric to include the influence of steering ratios and possibly vehicle weight.

Regarding parameters that may influence test results, the VDA stated that it did not conduct detailed tests to examine factors such as proving grounds, test track surface, slope, ambient climatic conditions, or brake temperatures. The commenter stated that this was not possible in its testing, because each vehicle manufacturer member carried out its own testing on its own test track. Accordingly, the VDA recommended that the agency should adopt the Alliance's recommendations that take into account relevant tolerances and influencing parameters.

The Alliance and AIAM stated their understanding that NHTSA's intention in proposing a responsiveness metric as part of the ESC rulemaking was not to change the basic responsiveness characteristics of the current fleet of vehicles without ESC (which they argue are satisfactory from a safety standpoint), but to prevent vehicle manufacturers from inappropriately suppressing the vehicle's natural level of responsiveness in order to enhance stability when the ESC system is activated. In support of this view, the commenters also pointed out that in the NPRM, the agency stated its expectation that approximately 98 percent of current ESC-equipped vehicles would comply with the proposal. However, the Alliance/AIAM argued that given the observed variability inherent in vehicle testing, the proposed responsiveness metric and criteria would not provide manufacturers with a sufficient margin to ensure compliance for a number of vehicles (primarily long wheelbase pick-ups and stretched limousines) being tested without ESC (*i.e.*, in a base handling state).

The Alliance/AIAM comments of November 17, 2006 presented considerable detail on three potential sources of variability: (1) Track variability; (2) temperature variability, and (3) run-to-run variability. While none of the 62 vehicles tested by NHTSA or the Alliance actually failed the proposed responsiveness criterion, the Alliance/AIAM attributed the success of some of the vehicles to test conditions (ambient temperature and test track) that were at the favorable end of the variability range. However, the commenters argued that for compliance testing purposes, manufacturers would have to certify that the vehicles would pass the performance test at the least favorable end of the variability range. Therefore, the Alliance/AIAM perceived the proposed responsiveness criterion as very demanding because of the large margin of compliance that would be necessary for certification, taking into account the sources of test variability.

The Alliance/AIAM proposed several alternative responsiveness criteria in their November 17, 2006 comments in order to address the problem of insufficient compliance margins that the commenters attributed to the inherent level of test variability. These suggestions were based on lowering the lateral displacement criteria from 6 feet to 4.5 feet (in a range determined according to the test weight of the vehicle) or increasing the time for the vehicle to reach the 6-foot displacement. On December 21, 2006, the Alliance/AIAM submitted a supplemental comment introducing the ideas of replacing the fixed steering angle of 180 degrees used in the test with a normalized steering angle that takes into account differences in vehicle steering ratio and using the GVWR of the vehicle rather than the test weight to create a cut-off point to qualify larger vehicles for a reduced displacement criteria. The supplemental comment did not suggest reducing the stringency of the responsiveness test of the NPRM as much as the previous comment. Since NHTSA wants to preserve the stringency of the responsiveness test as much as possible, it considered the supplemental comment rather than the original comment in trying to address the concerns of the Alliance and AIAM.

The Alliance/AIAM supplemental comment stressed the effect of GVWR and of steering ratio differences between vehicles on a reasonable criterion for lateral displacement in NHTSA's Sine with Dwell test maneuver. It used NHTSA's proposed criterion of 6 feet of lateral displacement for vehicles with a GVWR of 5,500 pounds or less, but the commenters suggested a small reduction to 5.5 feet for vehicles over 5,500 pounds GVWR and up to 10,000 pounds GVWR. The supplemental comment also suggested using a normalized steering wheel angle (that would account for differences in steering ratios between vehicles) rather than simply 180 degrees of steering wheel rotation as the minimum amount of steering for responsiveness tests. The steering wheel angle would be normalized by dividing the first peak steering wheel angle by the steering wheel angle at 0.3g determined by the slowly increasing-steer test (thereby expressing the amount of steering as a unitless number or scalar rather than in degrees). The Alliance/AIAM suggested that the responsiveness criteria should be applied for tests using a normalized steering wheel angle of 5.0 or greater.

NHTSA agrees with Alliance/AIAM comment regarding the use of the normalized steering wheel angle of 5.0 as the minimum steering input for applying the responsiveness test criteria. The performance test in the NPRM already includes the procedure for normalizing the steering wheel angle and calls for performing the Sine with Dwell maneuver at normalized steering wheel angles including 5.0, 5.5, 6.0, and 6.5, at which points responsiveness would be measured. For contemporary light vehicles, our data indicate that, on average, a normalized steering wheel angle of 5.0 is about 180 degrees. However, the heavier trucks and vans in the weight class with a GVWR up to 10,000 pounds tend to have slower steering ratios, which means that 180 degrees of rotation for those vehicles produces less steering motion of the front wheels than for cars (*e.g.*, a normalized steering wheel angle of 5.0 averages approximately 147 degrees for passenger cars, 195 degrees for SUVs, and 230 degrees for pickups). Since these are the vehicles whose inherent chassis properties limit responsiveness, the test becomes very difficult to pass if they are also tested at lower effective steering angles at the front wheels. Thus, the use of normalized steering wheel angles will remove a systematic disadvantage for trucks in the test procedure.

In response to the Alliance/AIAM comment's suggestion for applying the normalized steering angles to the first actual peak steering wheel angles measured during the test, we believe that there are problems with such an approach. Figure 2 of the regulatory text shows the ideal steering profile of the Sine with Dwell maneuver used to command the steering machine. A steering machine is utilized because it turns the steering wheel in the test vehicles with far greater precision and repeatability than is possible for a human driver. However, the power steering systems of some vehicles do not permit the steering machines to accomplish the desired steering profile. For the reasons discussed below, we believe the normalized steering angle should be based on the commanded angle of a steering machine (which replaces driver input during the test) with a high steering effort capacity

rather than on the measured maximum steering angle achieved by the machine.

The Alliance/AIAM also suggested that NHTSA should specify a maximum steering torque capacity of 50 to 60 Nm for steering machines to reduce the variability caused by the choice of steering machine and to assure manufacturers that the tests would be carried out with powerful machines to maximize the steering input during the responsiveness test. NHTSA is specifying (in S6.3.5 of the final rule) that the steering machine used for the Sine with Dwell maneuver must be capable of applying steering torques between 40 and 60 Nm at steering wheel velocities up to 1200 degrees per second. This is a more rigorous specification than simply a maximum torque range that does not include speed capability, and it prevents NHTSA from conducting compliance tests with some of the less powerful machines in use by test facilities.

However, even a robust steering machine cannot maintain the commanded steering profile with some vehicle power steering systems. Some of the electric power steering systems are especially marginal in that their power assistance diminishes at high steering wheel velocities. In the case of vehicle power steering limitations, the first steering angle peak in Figure 2 cannot be met, but the second peak as well as the frequency of the wave form are usually achieved. Thus, marginal vehicle power steering does not likely reduce the severity of the oversteer intervention part of the test, but it will reduce the steering input that helps the vehicle satisfy the responsiveness criteria. If NHTSA were to use the actual steering angle rather than the commanded steering angle as the normalized steering angle for the responsiveness test, it could create the unacceptable situation of vehicles that could not be tested for compliance, because the test would not allow for their evaluation. For example, if the steering machine could not achieve a normalized steering wheel angle of 5.0 even when commanded to a normalized angle of 6.5 because of vehicle limitations, the vehicle could not be said to fail, no matter how poor its performance.

Therefore, the agency has decided to use the commanded steering profile (using an assuredly robust steering machine), rather than the measured steering profile, to calculate the normalized steering wheel angle used to assess compliance with our lateral displacement requirement. We do not believe that this creates a practical problem. At this time, the larger vehicles have reasonably powerful steering systems that should enable them to achieve actual peak steering angles within at least 10 degrees of the commanded peak. Furthermore, under this approach to defining the steering input, the lateral displacement required for large vehicles would be reduced to 5 feet rather than the 5.5 feet requested in the Alliance/AIAM supplemental comment (with its somewhat higher measured steering angle). The weaker electric power steering systems discussed above are typically found on cars, and cars tend to be responsive enough to pass the 6-foot lateral displacement criterion at normalized steering wheel angles of less than 5.0. Therefore, S5.2 of the proposed standard has been revised to read as follows:

S5.2 Performance requirements. During each test performed under the test conditions of S6 and the test procedure of S7.9, the vehicle with the ESC system engaged must satisfy the stability criteria of S5.2.1 and S5.2.2, and it must satisfy the responsiveness criterion of S5.2.3 during each of those tests conducted with a commanded steering wheel angle of 5A or greater, where A is the steering wheel angle computed in S7.6.1.

As noted above, the NPRM included a responsiveness criterion that specified a minimum lateral movement of 6 feet during the first 1.07 seconds of steering during the Sine with Dwell maneuver. The purpose of the criterion was to limit the loss of responsiveness that could occur with unnecessarily aggressive roll stability measures incorporated into the ESC systems of SUVs. This is a real concern, as our research has demonstrated that one such system reduced the lateral displacement capability of a mid-sized SUV below that attainable with a 15-passenger van, multiple unloaded long wheelbase diesel pickups, and even a stretched wheelbase limousine.

A heavy-duty pickup truck understeers strongly in this test because of its long wheelbase and because it is so front-heavy under the test condition. The ESC standard is not intended to influence the inherent chassis properties of these vehicles (which were tested without ESC), because low responsiveness in the unloaded state is the consequence of a chassis with reasonable inherent stability in the loaded state. The standard must avoid causing vehicles to be designed with chasses that are unstable at GVWR and rely on ESC in normal operation. NHTSA is also aware that some very large vans with a high center of gravity, such as 15-passenger vans, rely on their ESC system to reduce responsiveness because of special concerns for loss of control and rollover. While it is necessary to respect the responsiveness limitations appropriate to large vehicles with commercial purposes, there is no need for lighter vehicles designed for personal transportation, including SUVs, to give up so much of the object avoidance capability of their chassis when tuning the ESC system.

NHTSA agrees with the Alliance/AIAM comment suggesting a lower responsiveness criterion for vehicles with higher GVWRs, but we disagree with the 5,500-pound GVWR break point suggested by the commenters. Some large passenger cars, such as the Mercedes-Benz S-class, have GVWRs near this level. With this break point, minivans like the Honda Odyssey and midsize SUVs like the Toyota 4Runner and Jeep Cherokee would be considered to have the same limitations as 15-passenger vans and trucks with a GVWR of 10,000 lbs. We believe a more representative break point was established by Standard No. 135, *Light Vehicle Brake Systems*, at a GVWR of 3,500 kg (7,716 pounds). Accordingly, S5.2.3 of the proposed standard has been revised to read as follows:

S5.2.3 The lateral displacement of the vehicle center of gravity with respect to its initial straight path must be at least 1.83 m (6 feet) for vehicles with a GVWR of 3,500kg (7,716 lb) or less, and 1.52 m (5 feet) for vehicles with a GVWR greater than 3,500 kg (7,716 lb) when computed 1.07 seconds after the Beginning of Steer (BOS). BOS is defined in S7.11.6.

6. Definition of ''ESC System'' and Required Equipment

As noted above, the NPRM proposed to require installation of an ESC system that: (1) Is capable of applying all four brakes individually and has a control algorithm that utilizes this capability; (2) is operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC or the vehicle is below a low speed threshold where loss of control is unlikely, and (3) remains operational when the antilock brake system or traction control system is activated (see S5.1). The ESC system must also meet the proposed performance requirements for lateral stability and vehicle responsiveness (*see* S5.2).

Under S4 of the proposal, an ''ESC System'' is defined as a system that has all of the following attributes: (1) That augments vehicle directional stability by applying and adjusting the vehicle brakes individually to induce correcting yaw torques to a vehicle; (2) that is computer-controlled with the computer using a closed-loop algorithm to limit

vehicle oversteer and to limit vehicle understeer when appropriate; (3) that has a means to determine the vehicle's yaw rate and to estimate its side slip; (4) that has a means to monitor driver steering inputs, and (5) that is operational over the full speed range of the vehicle (except below a low-speed threshold where loss of control is unlikely).

According to the VDA, it supports the definition for ''ESC system'' included in the agency's proposal which ''corresponds to modern state-of-the-art ESC systems.''

(a) Clarification of Performance Expectations

Delphi expressed support for the approach in the agency's ESC proposal to combine an ESC definitional requirement with a performance requirement (*i.e.*, a lane change maneuver at 50 mph conducted on a dry surface), until such time as the agency can conduct relevant research into ESC operation on slippery surfaces and/or for extreme understeer condition, which may support future requirements under an amended standard. However, Delphi did recommend that the agency include an explicit statement in the final rule about the performance expectations across all operating conditions. Specifically, Delphi suggested that the final rule should state that a vehicle with ESC should be equally or more stable and equally or more responsive than a vehicle without ESC, across all speeds, road surface frictions, and maneuvers. The commenter also stated that improvements in handling stability should not significantly reduce handling responsiveness, and visa-versa.

We agree that, to the extent possible, improvements in handling stability should not significantly reduce handling responsiveness, and visa-versa. To ensure that this goal is achieved, the standard includes a test with responsiveness criteria (discussed in Section IV.C.5) that requires ESC-equipped vehicles to demonstrate an acceptable practical level of lateral displacement capability in response to a specified amount of steering.

(b) Clarification of Threshold Speed

In their comments, the Alliance/AIAM agreed with that portion of the NPRM providing that ESC systems are not required to be operational at very low speeds, even though the system is technically ''on.'' However, the commenters argued that the proposed language in the definition of ''ESC System'' under S4 stating ''except below a speed threshold where loss of control is unlikely'' is not objective and could lead to uncertainty in compliance testing. Accordingly, the commenters recommended revising the relevant portion of that definition to read as follows: ''That is operational over the full speed range of the vehicle (*except at vehicle speeds less than 20 mph*).''

As reflected in the NPRM, we originally thought that it would be appropriate to provide flexibility by leaving determination of a ''low-speed threshold where the loss of control is unlikely'' to the discretion of vehicle manufacturers and ESC suppliers. However, we have decided to grant the industry's request that we increase the specificity of S4 by providing a explicit threshold speed below which the ESC system need not operate. The Alliance/AIAM suggested a low-speed threshold of 20 mph.

To determine an appropriate low-speed threshold, NHTSA must consider three factors:

1. ESC should not be active when the vehicle's Antilock Brake System (ABS) is not active. If the vehicle's ESC was active but the ABS was inactive, then ESC brake applications could result in one or more of the vehicle's wheels locking up. While one wheel locking up may not cause safety problems, if two or more wheels lock up, the vehicle may experience lateral instability. Even at low speeds, this situation may result in a safety problem.

2. All ABSs must have a low-speed threshold below which the ABS becomes inactive. Otherwise, it would be impossible to use the vehicle's brakes to bring a vehicle to a complete stop, because the ABS would keep activating and releasing the brakes when the driver tried to stop. FMVSS No. 135 does not currently contain performance requirements for ABSs; therefore, that standard does not set a low-speed threshold for them. However, S7 of FMVSS No. 135 does indicate that wheel lock-ups below a low-speed threshold are not a safety concern. *See* S7.1.3(e), S7.2.1(d), and S7.2.3(d) of FMVSS No. 135. Lock-ups at vehicle speeds above 15 km/h can cause safety problems.[55] Similarly, ECE Regulation 13–H,[56] which does contain performance requirements for ABSs, sets a low-speed threshold of 15 km/h (9.3 mph).

3. ESC systems obtain much of their information about the state of the vehicle from the ABS's wheel-speed sensors. At low vehicle speeds, the ABS wheel-speed sensors rotate more slowly, which could create unacceptable amounts of noise in the data sent to ESC. The European standard (ECE Regulation No. 13–H) shows that sensor data of acceptable quality can be obtained at speeds down to 15 km/h (9.3 mph), although certain changes may be required for some current ESC systems offered in the U.S. market.

Based on the preceding analysis, and in order to promote consistency with other FMVSSs and relevant international regulations, we have decided upon 15 km/h (9.3 mph) as the appropriate low-speed threshold above which ESC must be active. Accordingly, paragraphs S4 and S5.1.2 of the regulatory text have been revised to read as follows:

S4, ESC Definition, Part 6—(6) That is operational over the full speed range of the vehicle (except at vehicle speeds less than 15 km/h (9.3 mph) or when being driven in reverse). * * *

S5.1.2 Is operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC, the vehicle speed is below 15 km/h (9.3 mph), or the vehicle is being driven in reverse.

Please note that these changes to the regulatory text provisions related to when the vehicle is driven in reverse arise from our response to another public comment discussed under Section IV.C.6(f) below.

(c) Estimation of Sideslip—Request to Add Derivative

Although the comments of Honda Motor Co. Ltd. and American Honda Motor Co., Inc. (Honda) agreed that, in order to ensure proper operation, it is necessary for the ESC system to determine the vehicle's yaw rate (*i.e.*, spin), it did not agree that manufacturers should be required to measure vehicle sideslip directly. The commenter stated that manufacturers should be permitted to utilize other available status variables for estimating the spin of a vehicle. Accordingly, Honda recommended modifying the definition of ''Electronic Stability Control System'' in S4, specifically by revising the third part of that definition as follows: ''(3) That has a means to determine the vehicle's yaw rate and to estimate its sideslip *or side slip derivative*.'' As accompanying clarification, Honda recommended further clarification to state, ''*Sideslip or*

[55] *See* Snyder *et al.*, ''NHTSA Light Vehicle ABS Performance Test Development'' (NHTSA Technical Report), DOT HS 809 747 (June 2005), at 47. Available at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/ABSperformancefinalreport.pdf.*

[56] United Nations Economic Commission for Europe, Regulation No. 13–H, ''Approval of Passenger Cars with Regard to Braking, Rev. 2, World Forum for Harmonization of Vehicle Regulations (WP.29 ECE R13–H), May 11th 1998. Available at *http://www.unece.org/trans/main/wp29/wp29regs1–20.html.*

*side slip angle means the arctangent of the lateral velocity of the center of gravity of the vehicle divided by the longitudinal velocity of the center of gravity.*''

The Alliance/AIAM made a similar comment, arguing that many current ESC systems do not measure sideslip directly, but instead use a mathematical derivative with respect to time in order to determine the vehicle's sideslip. Accordingly, the Alliance/AIAM recommended revising the ''ESC System'' definition in S4 by revising the third requirement of that definition as follows: ''(3) That has a means to determine the vehicle's yaw rate and to estimate its side slip *or side slip derivative with respect to time*.''

The agency concurs with these comments. Because side slip and the derivative of side slip angle are intimately mathematically related, when one of these values is known, it is then possible to determine the other. This change will not have any impact on safety, because it merely permits a key value for ESC operation to be determined by alternate means. Accordingly, we have decided to modify the relevant portion of the ''ESC System'' definition in S4 to read as follows:

(3) That has a means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time.

(d) Request for Alternate Transducers

RLP Engineering recommended changes to the proposed definition of ''ESC System,'' particularly the requirement for the system to have a ''means to determine vehicle yaw rate and to estimate side slip.'' According to the commenter, vehicle instability occurs only when there is tire sideslip, not necessarily when there is vehicle sideslip. RLP Engineering stated that detection of instability involves determination of the amount of tire sideslip and in which wheel(s) it is occurring (with front tire sideslip corresponding to understeer and rear tire sideslip corresponding to oversteer). The commenter stated that vehicle yaw rate sensors may or may not be relevant to determining tire sideslip, and in any event, there may be other and potentially better ways to determine vehicle stability. For example, RLP Engineering stated that a means of detecting tire sideslip directly within a wheel assembly may eliminate the need for a yaw rate sensor. It also stated that it could be possible for tire sideslip to occur in the absence of vehicle sideslip, such as in an extreme understeer condition. Accordingly, RLP Engineering recommend that the agency modify the definition of ''Electronic Stability Control System'' in S4, specifically by revising the third part of that definition to read as follows: ''(3) That has a means to estimate *tire contact patch* sideslip.''

RLP Engineering made a similar comment regarding the portion of the ''ESC System'' definition pertaining to requirement (4) that the ESC system have ''a means to monitor driver steering inputs * * *.'' The commenter stated that current ESC systems use steering wheel angle data as one information component in estimating the intended path of a vehicle, as compared to its actual path. However, it again commented that if there is a means of detecting tire sideslip directly within a wheel assembly, there may be no need for the steering wheel angle sensor. Therefore, the commenter recommended deleting requirement (4) from the proposed definition of ''ESC System.''

When defining the ESC hardware and software requirements for the proposed FMVSS No. 126, we attempted to specify technology known to be effective in reducing real world crashes. Contemporary ESC systems meet all the requirements of S4, but they do not necessarily estimate the sideslip of the tire contact patch. As it happens, NHTSA has yet to see an effective technology for measuring the sideslip of the tire contact patch. While we are encouraged to learn of new technologies that may improve vehicle safety, quantifying their effectiveness is not possible until crash data become available, even if one would theoretically expect the alternative technology to affect vehicle performance in a similar manner as the proven technology.

Therefore, we do not concur with RLP Engineering's suggested revisions to S4. We have no effectiveness data for ESC-type systems that estimate the sideslip of the tire contact patch instead of determining the vehicle's yaw rate, or estimating the vehicle's sideslip, and monitoring the driver's steering inputs. Until crash data exist for such systems, we are not willing to treat them as equivalent to compliant ESC systems under FMVSS No. 126, which have demonstrated that they can save thousands of lives each year.

(e) Interaction With Other Vehicle Systems

Although proposed paragraph S5.1.3 states, ''Remains operational when the antilock brake system or traction control system is activated,'' the Alliance/AIAM stated that on current vehicles, these systems tend not to be functionally separate but instead are integrated into a single system. In order to allow subsystem arbitration to occur as needed to optimize ESC performance, the commenters recommended modifying paragraph S5.1.3 as follows: ''Remains *capable of activation even if* the antilock brake system or traction control system is *also* activated.''

The agency agrees with the Alliance/AIAM recommendations on this issue. Anti-lock brakes, traction control, and ESC systems all utilize the vehicle's brake control system to accomplish their intended stability enhancement goals. It is imperative that the vehicle's design logic for activation of these systems be integrated so that these systems can work in unison together addressing vehicle instabilities. Accordingly, we are amending S5.1.3 in the manner suggested by the commenters.

(f) ESC Operation in Reverse

The Alliance/AIAM, Robert Bosch Corporation (Bosch), Continental Automotive Systems (Continental), Delphi, and Nissan North America, Inc. (Nissan) all requested that the final rule not require ESC operability when the vehicle is driven in reverse, a functionality not presently part of current ESC systems and one which the commenters do not believe is a necessary part of the ESC rulemaking. Commenters further stated that requiring ESC operation in reverse would necessitate costly changes to current ESC systems.

In response, we note that the agency never intended the ESC system to be operable when the vehicle is being driven in reverse. We agree that requiring operation in reverse would necessitate costly changes to current ESC systems with no anticipated safety benefit. Our belief is that the main safety problems while the vehicle is operating in reverse are backing into/over pedestrians, backing over edges (drop-offs), and backing into inanimate objects (*e.g.*, other vehicles, buildings). ESC is not expected to help prevent any of these types of crashes.

Furthermore, vehicles are rarely driven rapidly in reverse. Therefore, the provision in S5.1.2 that ESC need not function when ''the vehicle speed is below 15 km/h (9.3 mph)'' means that ESC would typically not have to be active when the vehicle is in reverse. Requiring ESC to be active for those rare times when the vehicle is backing rapidly would be unreasonable, especially since having an active ESC in this situation would not improve safety.

Accordingly, the relevant provisions of the regulatory text have been revised to read as follows:

S4, ESC Definition, Part 6—(6) That is operational over the full speed range of the vehicle (except at vehicle speeds less than 15km/h (9.3 mph) or when being driven in reverse). * * *

S5.1.2 Is operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC, the vehicle speed is below 15 km/h (9.3 mph), or the vehicle is being driven in reverse.

Please note that the changes to the regulatory text about vehicle speeds less than 15km/h (9.3 mph) have been provided in response to another public comment discussed under Section IV.C.6(b) above.

7. ESC Performance Requirements

(a) Definition for ''Lateral Acceleration''

The Alliance/AIAM and Honda recommended that the agency include a definition in S4 of the final rule for the term ''lateral acceleration,'' suggesting use of the following definition from SAE J670e: ''*Lateral Acceleration—The component of the vector acceleration of a point in the vehicle perpendicular to the vehicle x axis (longitudinal) and parallel to the road plane.*''

The Alliance/AIAM stated that the NPRM does not define a method of determining lateral acceleration at the vehicle's center of gravity (Aycg). In response, the commenters recommended that, in the final rule, the agency should specify that the accelerometers be placed on the centerline of the vehicle and on the floor between the front and rear seat whenever possible (or as close to that location as possible). With respect to Aycg, the commenters requested that the agency incorporate the following formula into the standard:

$$\mathbf{Aycg = \underbrace{(Aym - \sin(roll)/\cos(roll))}_{\text{Measurement \& Roll Correction}} + \underbrace{(CF * yaw_acceleration * X)}_{\text{Longitudinal Location Correction}}}$$

Where:

Aycg = the calculated lateral acceleration at the CG of the vehicle (g);

Aym = the acceleration as measured by the body-mounted accelerometer (g);

Roll = the roll angle of the body with respect to the ground (degrees);

Yaw_acceleration = the first derivative of yaw rate with respect to time (degrees/second);

X = the longitudinal distance between the accelerometer and vehicle center-of-gravity (m);

CF = $1.78 \times 10^{-3}$ (unit conversion factor)

The term ''lateral acceleration'' is used in the regulation text and so the agency has decided to add a definition to section S4. The agency will use the definition as recommended by the Alliance/AIAM and provided in SAE J670E, *Vehicle Dynamics Terminology* (rev. July 1976):

*Lateral Acceleration* means the component of the vector acceleration of a point in the vehicle perpendicular to the vehicle x axis (longitudinal) and parallel to the road plane.

The formula for computing lateral acceleration suggested by the commenters is an abbreviated version of what NHTSA has been using for many years. A qualitative description of NHTSA's methods for determining the corrected lateral acceleration have been included in a new section S7.11 of the final rule that deals with data processing. A complete suite of the equations used by NHTSA (*i.e.*, those applicable to not only lateral acceleration, but for longitudinal acceleration as well), are provided in the laboratory test procedure. Additionally, these equations have been incorporated into the Common Data Processing Kernel described in Section IV.C.7(e)(vi).

(b) Lateral Displacement Calculation

Regarding calculation of lateral displacement, paragraphs S5.2.3.1 and S5.2.3.2 of the proposal stated that such calculation would use double integration with respect to time of the measurement of lateral acceleration at the vehicle center of gravity (where time, t = 0, for the integration operation is the instant of steering initiation), as expressed by the following formula:

$$\text{Lateral Displacement} = \iint Ay_{C.G.}\,dt$$

Delphi agreed that, given the short interval of time in the initial phase of the lane change maneuver, it is reasonable to use double integration of measured lateral acceleration to approximate the vehicle's actual lateral displacement. Still, the commenter argued that the two are technically not exactly equivalent, because lateral acceleration is measured in the coordinate frame of the vehicle, whereas lateral displacement is in the fixed reference frame of the road (*i.e.*, the surface of the earth). According to the commenter, the vehicle frame can rotate with respect to the earth frame, leading

to an error in the double integration method. Thus, Delphi stated that it should be expected that there will always be a small error in calculation of a vehicle's lateral displacement due to coordinate system differences. Nevertheless, Delphi commented that this error is likely to be small enough to be insignificant when compared to the actual displacement encountered during a particular test maneuver, given that the vehicle's rotation is small (less than 20 degrees) in the early stage of the lane change maneuver. However, the commenter seemed to suggest that the agency should somehow acknowledge and account for such error as part of the ESC performance requirement.

We agree with Delphi's comment stating the double integration method used to calculate lateral displacement may produce a small error compared to actual displacement encountered during a particular test maneuver. However, like Delphi, we believe that because the integration interval is short (since lateral displacement is assessed 1.07 seconds after initiation of the maneuver's steering inputs), the integration errors are expected to be so small as to be negligible. Therefore, we do not believe that any changes to the regulatory text are needed to account for this inaccuracy.

(c) Yaw Rate Calculation

The NPRM set forth the following stability criteria for ESC systems. The yaw rate measured one second after completion of the sine with dwell steering input (time $T_0 + 1$ in Figure 1) must not exceed 35 percent of the first peak value of yaw velocity recorded after the beginning of the dwell period ($\dot{\psi}_{Peak}$ in Figure 1) during the same test run (*see* S5.2.1), and the yaw rate measured 1.75 seconds after completion of the Sine with Dwell steering input must not exceed 20 percent of the first peak value of yaw velocity recorded after the beginning of the dwell period during the same test run (*see* S5.2.2).

The Alliance and AIAM requested a modification to the yaw rate ratio calculation methodology set forth in S5.2.1 and S5.2.2, which specify that '' * * * first peak value of yaw velocity recorded after the beginning of the dwell period. * * * '' The commenters stated that the first peak often occurs near the start of the dwell, and it can actually occur *before* the start of the dwell. In order to account for this possibility and to ensure that the calculation is correct and consistent in all cases, the Alliance/AIAM comments recommended revising the relevant language of S5.2.1 and S5.2.2 as follows: '' * * * first peak value of yaw velocity recorded after the *steering wheel angle changes sign (between first and second peaks)* * * * ''

According to Honda, the proposed rule would require that the tested vehicle suppress the yaw rate after completion of the Sine with Dwell steering input within the specified performance requirements, one of which is that the yaw rate may not exceed the specified threshold. Honda stated that the agency itself has acknowledged that in certain instances, negative yaw rates may be produced and measured. Thus, Honda recommended modifying S5.2.1 and S5.2.2 to specify that the measurement is for the ''absolute value of yaw rate'' (rather than simply ''yaw rate,'' as proposed), in order ensure that any negative yaw rate is included in the standard's yaw rate calculation.

We agree with the Alliance/AIAM comment on this issue. Because their proposed regulatory language better expresses what NHTSA intended, we have decided to modify paragraphs S5.2.1 and S5.2.2 to read as follows:

S5.2.1 The yaw rate measured one second after completion of the sine with dwell steering input (time $T_0 + 1$ in Figure 1) must not exceed 35 percent of the first peak value of yaw rate recorded after the steering wheel angle changes sign (between first and second peaks) ($\dot{\psi}_{Peak}$ in Figure 1) during the same test run, and

S5.2.2 The yaw rate measured 1.75 seconds after completion of the sine with dwell steering input must not exceed 20 percent of the first peak value of yaw rate recorded after the steering wheel angle changes sign (between first and second peaks) during the same test run.

However, we do not agree with Honda's comment. A negative yaw rate ratio can only be achieved when the yaw rate measured at a given instant in time is in an opposite direction of the second yaw rate peak, which can have a much different meaning than the absolute value of identical magnitude. Although it is very unlikely, taking the absolute value of the yaw rate at 1.0 or 1.75 seconds after completion of steer could cause a compliant vehicle be deemed non-complaint if the respective yaw rate ratios are large enough. For example, if at 1.75 seconds after completion of steer a vehicle produces a yaw rate ratio of −21 percent, the vehicle would be in compliance with our proposed lateral stability criteria. However, if the absolute value of the yaw rate ratio were used (21 percent), the vehicle's performance would be non-compliant.

Requiring a provision that prevents a negative yaw rate ratio does not simplify the data analysis process, and can only confound interpretation of the test data. We see no reason to accept this recommendation from Honda.

(d) Temperature and Pavement Specifications

As part of the Alliance/AIAM comment regarding the effect on the margin of compliance for the responsiveness criterion (S5.2.3) of the observed variability inherent in vehicle testing, the parties made specific suggestions about the temperature and pavement specifications (S6) for the test.

The NPRM proposed that the ambient temperature for testing would be between 0 °C (32 °F) and 40 °C (104 °F) (*see* S6.1.1).

According to the Alliance/AIAM comments, their research demonstrates that responsiveness is reduced at higher temperatures, which is typical of vehicles with all-season tires. It recommended that testing should be conducted in a range of 50 °F to 104 °F, in order to reduce the temperature sensitivity effect demonstrated at low temperatures. The Alliance/AIAM comments stated that if this more restricted temperature range is multiplied by the temperature sensitivity of the relatively sensitive test vehicle examined, the maximum change in lateral displacement due to temperature variability should be limited to 0.3 to 0.4 feet.

NHTSA understands the Alliance/AIAM suggestion to be a comment on the general desirability of reducing sources of variability in vehicle testing, because its suggestion would have the effect of preventing NHTSA compliance testing at temperatures that favor a vehicle's chance of passing the test. However, it also has the disadvantage of reducing the length of the testing season for NHTSA's potential compliance test contractors located in colder States. We agree with the goal of better repeatability but prefer a minimum temperature of 7 °C (45 °F) for the sake of practicability. We believe that conducting testing down to 7 °C (45 °F) will still prevent the low temperature effects which the commenters seek to address and will not impact our ability to evaluate the performance of ESC systems. Accordingly, we are amending S6.1.1 to read as follows:

*S6.1.1 The ambient temperature is between 7 °C (45 °F) and 40 °C (104 °F).*

The NPRM proposed the following specifications for the road test surface (*see* S6.2). The test would be conducted on a dry, uniform, solid-paved surface (*i.e.*, without irregularities and undulations such as dips and large cracks) (*see* S6.2.1). As proposed, the road test surface would be required to produce a peak friction coefficient (PFC)

of 0.9 ± 0.05 when measured using an American Society for Testing and Materials (ASTM) E1136 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 64.4 km/h (40 mph), without water delivery (*see* S6.2.2). The proposal also specified that the test surface would have a consistent slope between level and 2% and that all tests are to be initiated in the direction of positive slope (uphill) (*see* S6.2.3).

The Alliance/AIAM argued that the actual surfaces of many of the test facilities used to develop the supporting performance data (test facility characteristics provided in a table in the comments) would not meet the specifications in the standard. The commenters argued that the proposed requirement in S6.2.3 that ''all tests are to be initiated in the direction of positive slope (uphill)'' is unduly restrictive and would preclude the use of a number of test tracks where the slope runs either perpendicular or diagonal to the length of the track, because such tracks would not provide enough room to run the test. The commenter also stated that their review suggested that most test tracks have a slope of 1 percent or less. Accordingly, the Alliance/AIAM recommended that in the final rule, the agency should modify S6.2.3 as follows to tighten the proposed 2 percent maximum slope restriction to 1 percent and to eliminate the direction requirement. More importantly, the commenters argued that the lower end of the peak friction coefficient range was not representative of the test facilities used in the research. Therefore, the Alliance/AIAM recommended increasing the nominal specification from 0.9 ± 0.05 to 0.95 ± 0.05.

In response to these comments, we note that NHTSA based its surface coefficient specification on FMVSS No. 135, *Light Vehicle Brake Systems*, which simply specifies a peak friction coefficient (PFC) of 0.9. While it is unlikely that any facility has exactly that PFC, NHTSA's compliance testing for Standard No. 135 is performed on a surface with a PFC somewhat higher than the specification which creates a margin for clear enforcement, and manufacturers who are assuring themselves of compliance may wish to test on a surface slightly below the specification to create a compliance margin for themselves. In attempting to increase objectivity by putting a tolerance on the 0.9 PFC, the NPRM created the possibility of compliance tests for Standard No. 126 being performed on lower coefficient surfaces than those for Standard No. 135. That was not NHTSA's intention, and we are changing the specification to match that in Standard No. 135, using the same compliance testing conventions.

We are also reducing the maximum slope tolerance which eliminates the need for a directional specification. We agree that most test tracks have a slope of 1 percent or less, which is so slight that a directional specification is unnecessary—in effect, there is no uphill to worry about. Accordingly, we are amending S6.2.2 and S6.2.3 to read as follows:

S6.2.2 The road test surface must produce a peak friction coefficient (PFC) of 0.9 when measured using an American Society for Testing and Materials (ASTM) E1136–93 (1993) standard reference test tire, in accordance with ASTM Method E 1337–90 (rev. 1996), at a speed of 64.4 km/h (40 mph), without water delivery. These standards are here incorporated by reference as explained in S3.2 above.

S6.2.3 The test surface has a consistent slope between level and 1%.

(e) Data Processing Issues

In order to ensure consistent calculation of lateral displacement, the Alliance and AIAM recommended specification of the following details related to data processing in the regulatory text for FMVSS No. 126.

(i) Determination of Beginning of Steering

The Alliance/AIAM comments recommended that the start of steering be defined as the moment when the ''zeroed'' steering wheel angle (SWA) passes through 5 degrees. The commenters stated that this modification is important to ensure that the start of steering is determined to accurately and consistently calculate performance metrics for the Sine with Dwell test.

The process used by NHTSA to identify ''beginning of steering'' uses three steps. In the first step, the time when steering wheel velocity that exceeds 75 deg/sec is identified. From this point, steering wheel velocity must remain greater than 75 deg/sec for at least 200 ms. If the condition is not met, the next time steering wheel velocity that exceeds 75 deg/sec is identified and the 200 ms validity check is applied. This iterative process continues until the conditions are satisfied. In the second step, a zeroing range defined as the 1.0 second time period prior to the instant the steering wheel velocity exceeds 75 deg/sec (*i.e.*, the instant the steering wheel velocity exceeds 75 deg/sec defines the end of the ''zeroing range'') is used to zero steering wheel angle data. In the third step, the first instance the filtered and zeroed steering wheel angle data reaches −5 degrees (when the initial steering input is counterclockwise) or +5 degrees (when the initial steering input is clockwise) after the end of the zeroing range is identified. The time identified in Step 3 is taken to be the beginning of steer.

The agency agrees that an unambiguous reference point to define the start of steering is necessary in order to ensure consistency when computing the performance metrics measured during compliance testing. The practical problem is that typical ''noise'' in the steering measurement channel causes continual small fluctuations of the signal about the zero point, so departure from zero or very small steering angles does not indicate reliably that the steering machine has started the test maneuver. NHTSA's extensive evaluation of zeroing range criteria (*i.e.*, that based on the instant a steering wheel rate of 75 deg/sec occurs) has confirmed that the method successfully and robustly distinguishes the initiation of the Sine with Dwell steering inputs from the inherent noise present in the steering wheel angle data channel. As such, the agency has incorporated the 75 deg/sec criterion described above plus the commenter's suggestion of the 5 degree steering measurement into S7.11, a new section on data processing added to the final rule in response to comments. The value for time at the start of steering, used for calculating the lateral responsiveness metrics described in Section IV.C.7(b), is interpolated.

(ii) Determination of End of Steering

The Alliance/AIAM recommended defining the end of steering event as the first occurrence of the ''zeroed'' steering wheel angle crossing zero degrees after the second peak of steering wheel angle. The commenters stated that this modification is important to ensure that the end of steering is determined to accurately and consistently calculate some of the performance metrics for the Sine with Dwell test.

The agency agrees that an unambiguous point to define the end of steering is also necessary for consistency in computing the performance metrics measured during compliance testing. The agency has incorporated the commenter's suggestion of the first occurrence of the ''zeroed'' steering wheel angle crossing zero degrees after the second peak of steering wheel angle in S7.11, a new section on data processing added to the final rule. While signal noise results in continual zero crossings as long the data is being sampled, the first zero crossing after the steering wheel has begun to

return to the zero position is a logical end to the steering maneuver.

(ii) Removing Offsets

The Alliance/AIAM comments recommended that, given the potential for the accelerometers used in the measurement of lateral displacement to drift over time, the agency should use the data one second before the start of steering to ''zero'' the accelerometers and roll signal.

Prior to the test maneuver, the driver must orient the vehicle to the desired heading, position the steering wheel angle to zero, and be coasting down (*i.e.*, not using throttle inputs) to the target test speed of 50 mph. This process, known as achieving a ''quasi-steady state,'' typically occurs a few seconds prior to initiation of the maneuver, but can be influenced by external factors such as test track traffic, differences in vehicle deceleration rates, etc. Any zeroing performed on test data must be performed after a quasi-steady state condition has been satisfied, but before the maneuver is initiated. The proposed zeroing duration of one second provides a good combination of sufficient time (*i.e.*, enough data is present so as to facilitate accurate zeroing of the test data) and performability (*i.e.*, the duration is not so long that it imposes an unreasonable burden on the driver). For past research, NHTSA has used zeroing intervals between 0.5 and 1.0 seconds. Our experience has shown the use of a 0.5 second interval is usually sufficient; however, the 1.0 second is more conservative and therefore preferred. We do not believe zeroing intervals longer than one second will improve the zeroing accuracy.

(iv) Use of Interpolation

According to the Alliance/AIAM, there are several events in the calculation of performance metrics that require determining the time and/or level of an event, including: (1) Start of steering; (2) 1.07 or 1.32 seconds after the start of steering; (3) end of steering; (4) 1 second after the end of steering, and (5) 1.75 seconds after the end of steering. The commenters recommended using interpolation for all of these circumstances, because such practice provides more consistent results and is less sensitive to differing sampling rates than other approaches (*e.g.*, choosing the sample that is closest in time to the desired event). Interpolation is a way of computing the exact time that the continuous steering signal crossed zero, even though the digital samples did not coincide with the exact zero point, but rather consisted of one sample slightly before the time of zero-crossing and one slightly after.

In determining specific timed and measured data points, the agency agrees with the Alliance and AIAM that the method of interpolation provides the most consistent results. Therefore, the agency will use this method during post data processing, as specified in S7.11.

(v) Method for Determining Peak Steering Wheel Angle

The Alliance/AIAM stated that because metrics for responsiveness are specified by steering wheel angle (SWA), a method for determining the actual SWA needs to be specified in the final rule for ESC. The commenters recommended using the first measured peak SWA, as it is the peak that directly influences the responsiveness measurement.

For the reasons discussed in our response to public comments on our lateral responsiveness criteria, we have decided in the final rule to define the torque capacity of the steering machine used in the responsiveness test and to use the commanded peak steering angle, rather than the measured peak steering angle, as the indication of tests in which the vehicle must meet the responsiveness criteria (*see* Section IV.C.5).

(vi) Need for a Common Data Processing Kernel

According to the Alliance/AIAM, data processing methods have a significant impact on the results that are generated. The commenters stated that as a longer-term objective, the agency should work with interested parties to develop and incorporate into the standard (either directly or by reference) detailed algorithms for processing of data and stability/responsiveness metric calculations. The Alliance/AIAM commented that a similar procedure is already in place in other safety standards (*e.g.*, FMVSS No. 208).

The agency agrees that data processing methods can have a significant impact on the results generated. To address this issue we have added necessary data processing details to the regulation text of the standard and plan to include in the compliance test procedure the MATLAB code used for post-processing critical yaw rate and lateral displacement performance data.

(f) ESC Initialization Period

Delphi stated that most ESC systems typically require a short initialization period after the start of each new ignition cycle, during which time the ESC system is not operational. The commenter stated that during this period, the ESC performs diagnostic checks and sensor signal correlation updates. Delphi commented that the duration of this ESC initialization interval may depend upon several factors, including distance traveled, speed, and/or signal magnitudes.

In response to other comments, we have modified S5.1.2 to clarify that ESC does not need to be active when the vehicle speed is below 15 km/h (9.3 mph). Therefore, the ESC manufacturer has a short period of time, from the time the vehicle's ignition is turned on to the time when the vehicle speed first exceeds 15 km/h (9.3 mph) to initialize ESC. The process of initializing ESC is, in many ways, similar to the process of initializing ABS. ABS systems typically have completed their initialization by the time the vehicle reaches speeds of 5 km/h (3.1 mph) to 9 km/h (5.6 mph). Therefore, NHTSA believes that allowing up to a speed of 15 km/h (9.3 mph) should be adequate to initialize ESC.

Honda, Continental and the Alliance/AIAM have pointed out that some types of diagnostic checks cannot be performed unless the vehicle is making turns or traveling at relatively high speeds. We have modified S7.10 to accommodate these types of diagnostic checks, as explained in the answer to Issue 8(b) below, ''Practicability Problems with Malfunction Detection.'' However, our expectation is that the ESC manufacturer can assume that the ESC has not malfunctioned and make the system operational once driving situations occur that permit these diagnostic checks to be performed.

(g) ESC Calibration

Mr. Petkun commented that the agency should require ESC systems to be calibrated to activate ''at the precise moment that the vehicle may go out of control.'' The commenter also suggested that the ESC system should be matched to the type of vehicle and complement driver characteristics; for example, Mr. Petkun stated that a minivan's ESC might be tuned to respond to vehicle movements at a slightly earlier point than an ESC system on a sports coupe or sedan.

With respect to Mr. Petkun's first comment, it is important to recognize that determining when ESC intervention must occur is a complicated balance of effectiveness and intrusiveness. Loss of control is not usually a binary condition. As such, one of the challenges of designing ESC control algorithms is how to anticipate when a loss-of-control situation may occur. More conservative algorithms may be tuned to activate sooner than those

allowing the vehicle to achieve higher slip angles prior to activation. However, the longer an intervention is delayed, the more aggressive it must typically be later in the maneuver in order to still be effective. Therefore, determining when intervention should occur is a decision not only based on achieving good ESC performance, but also how sensitive individual drivers may be to the manner in which the intervention occurs. Although NHTSA has no way of resolving this subjective dilemma (an issue for each vehicle manufacturer and its ESC vendor to resolve), we can objectively assess how effective the final tuning is on a vehicle's lateral stability and responsiveness using the Sine with Dwell test maneuver and our ESC performance criteria.

In regards to Mr. Petkun's second comment, our discussions with ESC suppliers and vehicle manufacturers indicate that while different vehicles may use much of the same modular ESC hardware, the software controlling how each system operates contains make/model specific information. One way to ensure that the ESC software has been appropriately adapted to a particular make/model is to perform test track performance evaluations. We believe the Sine with Dwell maneuver, and the lateral stability and responsiveness performance criteria that evaluate the test output, provide an excellent way of assessing ESC system performance for all light vehicles. Regardless of whether the driver is operating a minivan or a sports car, we believe the vehicle's ESC should perform in an effective manner, quantified by successfully satisfying our minimum performance standards.

Other Issues

8. ESC Malfunction Detection Requirements

Under paragraph S5.3, *ESC Malfunction*, the NPRM proposed that the vehicle must be equipped with a telltale that provides a warning to the driver not more than two minutes after the occurrence of one or more malfunctions that affect the generation or transmission of control or response signals in the vehicle's electronic stability control system. The proposal also set forth the following additional requirement related to ESC malfunction detection.

Specifically, the ESC malfunction telltale would be required to be mounted inside the occupant compartment in front of and in clear view of the driver (*see* S5.3.1) and be identified by the symbol shown for ''ESC Malfunction Telltale'' in Table 1 of Standard No. 101 (49 CFR 571.101) (*see* S5.3.2). The ESC malfunction telltale would be required to remain continuously illuminated under the conditions specified in S5.3 for as long as the malfunction(s) exists, whenever the ignition locking system is in the ''On'' (''Run'') position (*see* S5.3.3), and except as provided in paragraph S5.3.5, each ESC malfunction telltale must be activated as a check of lamp function either when the ignition locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position (*see* S5.3.4). The ESC malfunction telltale need not be activated when a starter interlock is in operation (*see* S5.3.5). The ESC malfunction telltale must extinguish after the malfunction has been corrected (*see* S5.3.6).

Under the proposal, manufacturers would be permitted to use the ESC malfunction telltale in a flashing mode to indicate ESC operation (*see* S5.3.7).

As discussed below, several commenters raised a variety of concerns regarding operation of the ESC malfunction indicator (with malfunction telltale-related issues addressed later in this document under section IV.C.9, *ESC Telltale Requirements*).

(a) Types of Malfunctions To Be Detected

In its comments, Nissan objected to the use of the term ''any ESC component'' in the ESC malfunction detection portion of the standard's proposed test procedures (*see* S7.10.1), because the company believes that the term is not objective and is overly broad. Nissan stated that there are certain vehicle components which may be considered part of the ESC system, but whose failure would not impact the ability of the vehicle to meet the performance requirements specified under S5.2. The company used the example of a malfunction of the ESC off switch, the disconnection of which, it argued, would not ''affect the generation or transmission of control or response signals in the vehicle's electronic stability control system.'' Accordingly, Nissan argued that the agency should specify which components it deems to be part of the ESC system for malfunction testing purposes.

Unless a suitable resolution can be found to the ''any ESC component'' issue identified by Nissan, the company argued that the agency should delay the effective date for the ESC malfunction detection requirements until the end of the phase-in. Otherwise, Nissan again stated that it may not be able to garner sufficient carry-forward credits to meet the certification requirements of the phase-in.

Likewise, Toyota Motor North America, Inc. (Toyota) commented on a particular problem regarding ESC malfunction detection that could affect its phase-in compliance and carry-forward credits. Specifically, the difficulty is encountered because Toyota's ESC electronic control unit (ECU) is integrated into the vehicle's ABS ECU. According to the commenter, the problem involves the proposed test procedures under S7.10.1, which provide for ''simulate[ing] one or more ESC malfunction(s) by disconnecting the power source to any ESC component, or disconnecting any electrical connection between ESC components.'' As its vehicles are currently designed with a single ABS/ESC ECU, Toyota stated that if the power source is disconnected, only the vehicle's ABS malfunction lamp will illuminate, not the ESC malfunction telltale (although the company anticipates meeting the requirements of S7.10.1 for all other types of ESC malfunctions). Although Toyota stated its belief that illumination of the ABS malfunction lamp would be sufficient to warn drivers of a loss of function to the entire ABS/ESC system, it agreed that it would be possible to redesign its system to meet the proposed requirements of S7.10.1. However, Toyota projects that it will not be possible to resolve this problem until the end of the phase-in period.

In response to the concerns of Nissan and Toyota, we would start by noting that the agency has delayed the effective date of the controls and displays aspects of the ESC standard to the end of the phase-in in response to a number of similar comments. Stated another way, the ESC system must meet the malfunction detection requirements of the standard, according to the final rule's general phase-in schedule, but it need not signal the driver in a standardized fashion until the end of the phase-in. This delay in the effective date for the controls and displays requirements of the rule includes the ''ESC Off'' control and telltale, thereby resolving one specific concern raised by Nissan related to its ability to earn carry-forward credits.

As to the broader issue of which vehicle components are subject to ESC malfunction testing, we believe that a rule of reason applies. Simply stated, if a vehicle malfunction were to ''affect the generation or transmission of control or response signals in the vehicle's electronic stability control system,'' it must be detectable by the ESC system.

In other words, if the malfunction impacts the functionality of the ESC system, the ESC system must be capable of detecting it. For shared or connected components, a malfunction need only be detected to the extent it may impact the ESC system's operation. This is precisely the same malfunction requirements currently established for tire pressure monitoring systems (TPMS) under FMVSS No. 138. We see no reason why such a requirement, which is appropriate in the TPMS context, would be considered overly broad here. Furthermore, manufacturers are in a better position than the agency in terms of knowing the vehicle components involved in ESC operation.

As a specific example for the sake of clarity, we would consider the disconnection of the ''ESC Off'' switch to be a malfunction suitable for simulation under the standard, because it directly impacts ESC operability (even though a manufacturer voluntarily provides such a switch). However, we would not consider the disconnection of an ancillary function such as a hill-holding aid that may be controlled by a shared ESC computer to be a fault in the ESC system itself.

We are aware that because this final rule accelerates the phase-in schedule for ESC, it also creates greater pressure on manufacturers to earn carry-forward credits by installing compliant ESC systems as soon as possible. Again, because we think it is more important to have operating ESC systems sooner, we are moving the effective date of the standardization aspects of controls and displays to the end of the phase-in period. The specific difficulties recited by the commenters are analogous to the temporary lack of standardization that we find preferable to an overall phase-in delay. Therefore, we have decided to address these manufacturers' identified concerns in the following fashion. The test of the malfunction indicator calls for disconnecting various components to simulate a fault that should be detected. To reiterate the problems, when the power to the electronic control unit of some Toyota ESC systems is disconnected, the ABS malfunction telltale illuminates but the ESC malfunction telltale does not (because the control unit operates both systems), and disconnection of the optional ''ESC Off'' switch on some Nissan vehicles will not cause the malfunction telltale to illuminate. It has been the industry practice to provide a separate ESC malfunction telltale, in order to make consumers aware when this important safety device is potentially unavailable, but public comments have demonstrated that some additional time is necessary to standardize ESC malfunction telltale operation. We do not believe that vehicles with these minor deviations in the malfunction indicator should be disqualified for phase-in credit.

One solution would be to move the provision for malfunction detection to the later effective date of the telltales and controls standardization. However, it is not necessary to relax the important requirement for a malfunction warning to avoid complicating the phase-in of ESC. Instead, we have decided to insert a very narrow temporary exception under paragraph S5.3.9 to address the specific malfunction testing issues brought forward by Nissan and Toyota:

S.5.3.9 Prior to September 1, 2011, a disconnection of the power to the ESC electronic control unit may be indicated by the ABS malfunction telltale instead of the ESC malfunction telltale, and a disconnection of the ''ESC Off'' control need not illuminate the ESC malfunction telltale.

(b) Practicability Problems With Malfunction Detection

Under paragraph S7.10, *ESC Malfunction Detection*, the proposed test procedures for FMVSS No. 126 state that one or more ESC malfunction(s) would be simulated by disconnecting the power source to any ESC component, or disconnecting any electrical connection between ESC components (except for electrical connections for the telltale lamp(s)) (*see* S7.10.1). The proposed test procedures further provide, that with the vehicle stationary and the ignition locking system in the ''Lock'' or ''Off'' position, activate the ignition locking system to the ''On'' (''Run'') position and verify that within two minutes of activating the ignition locking system, the ESC malfunction indicator illuminates in accordance with S5.3 (*see* S7.10.2).

TRW Automotive expressed concern that the ESC malfunction detection portion of the test procedures, as currently drafted, may pose a safety hazard to test technicians. Specifically, TRW Automotive stated that paragraph S7.10 does not indicate that the vehicle is to be turned off before ''disconnecting the power source to any ESC component,'' and paragraph S7.10.4 merely states, ''Restore the ESC system to normal operation and verify that the telltale has extinguished.'' The commenter recommended that those two provisions be modified to explicitly state that the vehicle is to be in the ''off'' state prior to disconnecting or restoring the ESC system.

Honda stated that its understanding of S7.10 is that this portion of the test procedure will be conducted with the vehicle stationary. However, Honda stated that vehicle motion is necessary for the system to be able to detect certain ESC malfunctions (e.g., damage to the pulser of the wheel speed sensor) and to later extinguish the telltale once the malfunction is corrected (similar comment provided by Bosch, Continental). Accordingly, Honda sought clarification that testing conducted pursuant to S7.10 will involve only those malfunctions amenable to detection based upon static activation and deactivation.

Continental argued that some malfunctions are not time-based, but instead require comparisons of sensor outputs generated when the vehicle is driven. Accordingly, the commenter recommended elimination of the requirement that ESC malfunctions be detected within two minutes of occurrence, even if the vehicle is parked. Instead, Continental urged adoption of the following language: ''*The vehicle must be equipped with a telltale that provides a warning to the driver when one or more malfunctions occur that affect the generation or transmission of control or response signals in the vehicles electronic stability control system.*'' (Similar comments were provided by Bosch and Delphi.)

Similarly, the Alliance/AIAM commented that the proposed test procedure may be inadequate to detect a full range of electrical component failures, because some of these malfunctions cannot be detected when the vehicle is stationary. Instead, the commenters suggested that the agency adopt a more robust ESC malfunction test that would allow the engine to be running and the vehicle to be in motion as part of the diagnostic evaluation. To this end, the commenters suggested that the agency replace the existing provisions at S7.10.2 and S7.10.3 with the following language:

S7.10.2 *With the vehicle initially stationary and the ignition locking system in the ''Lock'' or ''Off'' position, activate the ignition system to the ''Start'' position and start the engine. Place the vehicle in a forward gear and obtain a steady speed of 30 mph ± 5 mph. Drive the vehicle for at least two minutes, including at least one left and one right turning maneuver. Verify that within two minutes of obtaining this steady speed, the ESC malfunction indicator illuminates in accordance with 5.3.*

S7.10.3 *Stop the vehicle, deactivate the ignition locking system to the ''Off'' of ''Lock'' position. After a five-minute period, activate the vehicle's ignition locking system to the ''Start'' position and start the engine. Verify that the ESC malfunction indicator again illuminates to signal a malfunction and*

*remains illuminated, as long as the engine is running or until the fault is corrected.*

NHTSA agrees with TRW Automotive that it is always prudent to make the disconnections and connections of ESC components with the power turned off, even though the components are generally powered by low-voltage DC current and the risk of harm to the vehicle would be greater than the risk to the technicians. Accordingly, we have amended paragraph S7.10.1 as follows, but we do not think the reminder need be repeated in S7.10.4 in view of other changes to its language being made.

S7.10.1 Simulate one or more ESC malfunction(s) by disconnecting the power source to any ESC component, or disconnecting any electrical connection between ESC components (with vehicle power off). When simulating an ESC malfunction, the electrical connections for the telltale lamp(s) are not to be disconnected.

NHTSA does not agree with Honda that S7.10 should be limited to only those malfunctions amenable to detection based upon static activation and deactivation. Our purpose in writing S7.10.2 was to ensure that ESC malfunctions would be detected within a reasonable time of starting to drive. The language proposed by the Alliance/AIAM conforms to our original intent, while clarifying that the vehicle should be driven during the proposed two-minute period so that the parts of its malfunction detection capability which depend on vehicle motion can operate. Accordingly, we are adopting the language suggested by the Alliance/AIAM for S7.10.2 and S7.10.3. We believe that this change also addresses the comment by Continental that malfunction detection is not a time-based function but one that requires certain driving motions to make ESC self-testing possible.

(c) Monitoring When System Is Off

Honda sought clarification of the proposed standard to ensure that there is not an unintended requirement for the ESC system to maintain constant monitoring even when the ignition key is in the ''off'' position. Accordingly, Honda recommended modifying S5.3.6 to read as follows: ''The ESC malfunction telltale must extinguish *at the initiation of the next ignition cycle* after the malfunction has been corrected.'' Honda also recommended modifying S7.10.4 to state: ''*Deactivate the ignition locking system to the ''off'' or ''lock'' position.* Restore the ESC system to normal operation and verify that the telltale has extinguished.''

Honda is correct that the agency does not expect the ESC system to maintain monitoring capability with vehicle turned off. However, we do not believe that it is necessary to restrict the extinguishing of the telltale to the exact instant of the initiation of the next ignition cycle. Therefore, we are amending paragraphs S5.3.6 (now S5.3.7) and S7.10.4 to read as follows:

S5.3.7 The ESC malfunction telltale must extinguish at the next ignition cycle after the malfunction has been corrected. * * *

S7.10.4 Deactivate the ignition locking system to the ''off'' or ''lock'' position. Restore the ESC system to normal operation, activate the ignition system to the ''Start'' position and start the engine. Verify that the telltale has extinguished.

(d) Minimum Performance Level

BorgWarner commented that the proposed ESC standard should set a defined minimum performance level for a vehicle when the ESC system is deactivated (i.e., ''off'') or when there is an ESC malfunction (which again may result in a failure mode of ESC ''off''). The commenter stated that unless this is done, negative safety consequences may arise under conditions where a driver is not aware of the vehicle's baseline stability behavior. BorgWarner argued that establishing a minimum stability performance level for a deactivated ESC system would be analogous to the minimum performance standard which the agency adopted for ABS ''foundation'' brake performance in the event ABS is deactivated due to a system malfunction.

NHTSA considers ESC to be a safety feature added to vehicles whose basic chassis properties have been designed to match their intended purposes. Our discussion in Section IV.C.5 (Lateral Responsiveness Criteria) is based upon the expectation by both NHTSA and the industry that ESC will not cause changes in the basic chassis properties of vehicles. We expect that ESC activations will be rare events in panic situations and that drivers will not depend upon the ESC system in the ordinary operation of the vehicle. In the case of an ESC malfunction or failure, the ESC telltale warns the driver that the ESC system is non-operational and may require repair. However, pending the repair, the driver would be no more at risk than a person driving an older car without ESC. Unless future developments prove these assumptions to be false, there is no need for additional ''minimum performance'' requirements on base vehicles equipped with ESC.

9. ESC Telltale Requirements

(a) ESC Telltale

As noted above, paragraph S5.3 of the ESC proposal would require each ESC system to include an ESC malfunction telltale mounted inside the occupant compartment in front of and in clear view of the driver (*see* S5.3.1) and identified by the symbol shown for ''ESC Malfunction Telltale'' in Table 1 of Standard No. 101 (49 CFR 571.101) (*see* S5.3.2). The ESC malfunction telltale would be required to remain continuously illuminated under the conditions specified in S5.3 for as long as the malfunction(s) exists, whenever the ignition locking system is in the ''On'' (''Run'') position (*see* S5.3.3), and except as provided in paragraph S5.3.5, each ESC malfunction telltale must be activated as a check of lamp function either when the ignition locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position (*see* S5.3.4). The ESC malfunction telltale need not be activated when a starter interlock is in operation (*see* S5.3.5). The ESC malfunction telltale must extinguish after the malfunction has been corrected (*see* S5.3.6). Under the proposal, manufacturers would be permitted to use the ESC malfunction telltale in a flashing mode to indicate ESC operation (*see* S5.3.7).

Several commenters raised specific issues pertaining to the ESC malfunction telltale, which are set forth and addressed below.

(i) Telltale Symbol Text Enhancement

Although Advocates supported use of the ISO symbol, it argued that the telltale should also include the abbreviation ''ESC,'' because that would allow drivers to better understand that their vehicle is equipped with an ESC system.

NHTSA shares the Advocates' concern regarding the importance of promoting drivers' understanding of ESC and whether or not their vehicle is equipped with ESC. However, we believe that augmenting the ESC malfunction telltale by adding the word, ''ESC,'' is unlikely to address that concern. As explained in the NPRM, NHTSA's research so far indicates that most drivers do not yet understand what ''ESC'' means. Insofar as drivers will have to learn the precise meaning of any telltale offered by manufacturers to convey the idea of ESC, NHTSA does not believe it necessary at this time to specifically require a telltale that

includes both the symbol and the acronym. We have no evidence that both together will convey a greater benefit than either alone. Additionally, no other FMVSS has required both a symbol and a text term together for a telltale, so for the sake of consistency we are reluctant to do so now. We believe that the ESC malfunction telltale symbol and substitute ''ESC'' text can effectively be used interchangeably. We also believe that most drivers become increasingly familiar with the meaning of instrument panel telltales over time, and we expect that this will be the case with ESC telltales and substitute text, as well.

Furthermore, NHTSA is sensitive to vehicle manufacturers' stated concern that limited instrument panel area is available for locating telltales. Paragraph S5.2.3 of FMVSS No. 101, *Controls and Displays*, states that ''[s]upplementary symbols, words, or abbreviations may be used at the manufacturer's discretion in conjunction with any symbol, word, or abbreviation specified in Table 1 or Table 2.'' Based on the above provision, augmenting the ISO symbol with the text ''ESC'' is permissible, provided that it does not violate the locational requirement contained in the definition of ''adjacent'' as specified in S4 of FMVSS No. 101.[57]

Therefore, for the reasons stated above, NHTSA believes that it is not necessary to require addition of the text ''ESC'' to the ESC malfunction telltale.

(ii) Telltale Symbol Alternative: Substitute Text

The Alliance/AIAM asked the agency to permit the use of the symbol ''ESC'' without the ISO symbol, as an alternative to the proposed symbol when the warning is provided by the vehicle's message/information center. These commenters argued that this approach is consistent with other FMVSS No. 101 Table 1 indicators. (Porsche Cars North America, Inc. (Porsche) made a similar comment.)

NHTSA agrees with the commenters that the general approach of FMVSS No. 101 is to provide flexibility to vehicle manufacturers via alternative text terms for telltales. Moreover, as the concept of ESC becomes more widely understood by drivers, we expect that offering the option of using the text term ''ESC,'' as opposed to manufacturer-specific ESC system acronyms, will facilitate driver recognition of the telltale. This promotes consistency in the telltale field, where there currently is little. Therefore, NHTSA has decided to permit use of the term ''ESC'' at the manufacturer's discretion instead of the ISO symbol. As a result, we are modifying S5.3.2 to read as follows:

S5.3.2 Effective September 1, 2011, must be identified by the symbol shown for ''ESC Malfunction Telltale'' or the specified words or abbreviations listed in Table 1 of Standard No. 101 (49 CFR 571.101);

In the event that the text alternative for the ESC malfunction telltale is presented via the vehicle's message/information center (defined as a ''common space'' under S4 of FMVSS No. 101), the conditions of S5.5.2 and S5.5.5 of FMVSS No. 101 (set forth below) must be met. While not specified in the proposed regulatory text, NHTSA believes it is necessary to modify S5.5.2 and S5.5.5 of FMVSS No. 101 to place restrictions on the use of the ESC telltale in a common space. The amended language reads as follows:

S5.5.2 The telltales for any brake system malfunction required by Table 1 to be red, air bag malfunction, low tire pressure, electronic stability control malfunction, passenger air bag off, high beam, turn signal, and seat belt must not be shown in the same common space.* * *

S5.5.5 In the case of the telltale for a brake system malfunction, air bag malfunction, side air bag malfunction, low tire pressure, electronic stability control malfunction, passenger air bag off, high beam, turn signal, or seat belt that is designed to display in a common space, that telltale must displace any other symbol or message in that common space while the underlying condition for the telltale's activation exists.

Therefore, when presenting the ESC malfunction telltale in a vehicle's common space display, the malfunction telltale must not appear in the same common space as any of the other listed telltales under paragraph S5.5.2 of FMVSS No. 101, and, when activated, it must displace any another message or symbol in its common space as long as the ESC malfunction condition exists, as required under paragraph S5.5.5 of FMVSS No. 101. For example, in the event that a failure of the ABS led to an ESC malfunction, both malfunctions would be required to be indicated to the driver and must be presented in separate common spaces.

(iii) Waiver of Yellow Color Requirement for ESC Telltale When Message/Information Center Is Used

The Alliance/AIAM asked the agency to waive the yellow color requirement when ESC malfunction indications are provided by the vehicle's message/information center, due to the difficulty associated with providing color in a message/information center (regardless of whether a text or symbol is used).

The use of message/information centers for presentation of ESC malfunction information is permissible to the extent that the requirements of FMVSS No. 101 are met (*see* 49 CFR 571.101 and discussion in Section IV.C.9(a)(ii) immediately above). The intent of the color requirements specified in Table 1 of FMVSS No. 101 is that the color yellow be used to communicate to the driver a condition of compromised performance of a vehicle system that does not require immediate correction. The International Standards Organization (ISO) in its standard titled, ''Road Vehicles—Symbols for controls, indicators, and tell-tales'' (ISO 2575:2004(E)), agrees with this practice through its statement of the meaning of the color yellow as ''yellow or amber: Caution, outside normal operating limits, vehicle system malfunction, damage to vehicle likely, or other condition which may produce hazard in the longer term.''

In the context of ESC, the agency purposely chose to associate indication of an ESC system malfunction with a yellow, cautionary warning to the driver. NHTSA believes that this requirement must be maintained in order to properly communicate the level of urgency with which the driver must seek to remedy the malfunction of this important safety system.

Furthermore, this policy is consistent with the agency's decision in our September 7, 2005 final rule responding to petitions for reconsideration of the Tire Pressure Monitoring System (TPMS) final rule, in which petitioners raised the identical issue of waiving the yellow color requirement for TPMS malfunctions and low tire pressure warnings when presented via a message/information center (*see* 70 FR 53079 (Sept. 7, 2005)). Therefore, NHTSA has decided to deny the request for waiver of the yellow color requirement for the ESC malfunction telltale or substitute text when a message/information center is used.

(iv) Telltale Illumination Strategy

Nissan stated that its current ESC systems utilize a telltale control logic that illuminates the ''ESC Off'' telltale

[57] Paragraph S4 of FMVSS No. 101 (49 CFR 571.101 S4) provides:

S4. *Definitions.*

*Adjacent*, with respect to a control, telltale or indicator, and its identifier means:

(a) The identifier is in close proximity to the control, telltale or indicator; and

(b) No other control, telltale, indicator, identifier or source of illumination appears between the identifier and the telltale, indicator, or control that the identifier identifies.

whenever the ESC malfunction telltale is illuminated. Nissan reasoned that this illumination strategy provides a clear message to the driver that the malfunctioning ESC system may not be able to perform normally and would therefore be ''off'' within the meaning of the standard's performance requirements of S5.4, *ESC Off Switch and Telltale* (*i.e.,* the system is in a mode that does not meet the requirements of S5.2, *Performance Requirements*). The commenter sought clarification that this telltale illumination strategy is permissible under the proposed ESC standard. (A similar comment was provided by the Alliance/AIAM.)

Nissan has correctly interpreted the regulatory text to indicate that when an ESC malfunction situation exists, manufacturers may choose to illuminate the ''ESC Off'' telltale (per Table 1 of FMVSS No. 101) or display ''ESC Off'' text in a message/information center in addition to illuminating the separate ESC malfunction telltale to emphasize to the driver that ESC functionality has been reduced due to the failure of one or more ESC components.

However, we believe that it is important to clarify here that the reverse situation (*i.e.*, illuminating the ESC malfunction telltale in addition to the ''ESC Off'' telltale when ESC has been manually switched off by the driver) is prohibited, unless an actual ESC malfunction condition exists. In such situations, an ESC system actively disengaged by the driver through an appropriate control is not malfunctioning, but is instead functioning properly. Furthermore, such an illumination strategy could cause driver confusion, which may in turn decrease confidence in the ESC system.

(v) Telltale Extinguishment

TRW Automotive urged NHTSA to clarify paragraph S5.3.6 of its proposal, which provides, ''The ESC malfunction telltale must extinguish after the malfunction has been corrected.'' The commenter argued that this provision may cause confusion, because it could be interpreted as implying that all ESC malfunctions will require corrective action by a third party (*e.g.*, dealership, repair shop). Instead, TRW Automotive stated that there are numerous examples of situations in which outside intervention is not required to return the ESC system to normal operation, such as where a sensor may become temporarily inactive but subsequently returned to service. Accordingly, the company recommended revising S5.3.6 as follows: ''The ESC malfunction telltale must extinguish after *the ESC system has determined* the malfunction *no longer exists.*''

We clarify that in paragraph S5.3.6 of the NPRM, NHTSA did not intend to imply that all ESC malfunctions require corrective action by a third party. However, TRW Automotive's suggested language is problematic, because, unlike the agency's proposed language, it sets no requirement for the ESC system to actually determine and recognize that the malfunction no longer exists. Therefore, NHTSA has decided to retain the proposed requirement set forth in paragraph S5.3.6 without revision as part of this final rule.

(vi) Telltale Location

Consumers Union argued that, if the agency does decide to adopt a requirement for a visual warning of ESC activation, the standard should require an appropriate telltale in that vehicle's ''instrument cluster'' where its message would be more prominent, rather than in the vehicle's center console (*i.e.*, where the radio and climate control mechanisms are normally located).

In paragraph S5.3.1 of the NPRM for FMVSS No. 126, NHTSA proposed to require that the ESC malfunction telltale ''[m]ust be mounted inside the occupant compartment in front of and in clear view of the driver.'' In addition, paragraph S5.1.2 of FMVSS No. 101 requires that ''telltales and indicators * * * must be located so that, when activated, they are visible to the driver under the conditions of S5.6.1 and S5.6.2'' (*i.e.*, the driver has adapted to the ambient light roadway conditions and is properly restrained by the seat belts). NHTSA believes that these existing requirements are sufficiently stringent to ensure that vehicle manufacturers will locate the ESC malfunction telltale in a reasonable location, so the agency has decided that it is not necessary to specify that the ESC telltale must be located within the instrument panel area.

(vi) Use of ESC Malfunction Telltale To Indicate Malfunctions of Related Systems/Functions

The Alliance/AIAM commented that NHTSA should allow manufacturers to use the ESC malfunction indicator to indicate the malfunction of any ESC-related system, including traction control, trailer stability assist, corner brake control, and other similar functions that use throttle and/or individual wheel torque control to operate and which share common components with the ESC system. The commenters stated that this approach would be directly analogous to the position the agency has taken with respect to the frontal air bag readiness indicator required by S4.5.2 of FMVSS No. 208, *Occupant Crash Protection.* The commenters quoted a letter from NHTSA to Porsche dated July 30, 1996, stating, ''Since the dealer or repair business can inform the owner which system is malfunctioning, it does not matter that the indicator does not make that distinction.''

NHTSA understands the commenters' concerns regarding space limitations in the instrument panel for incorporation of additional telltales. While the International Standards Organization in its standard titled, ''Road Vehicles—Symbols for controls, indicators, and tell-tales'' (ISO 2575:2004(E)), specifies telltales for ''traction control'' and ''traction control off or not available,'' we agree that our established position noted by the commenter in relation to air bags may be similarly applied here. We believe that a single malfunction telltale that relates to a vehicle's stability-related safety systems generally is sufficiently informative for the driver, and it should be effective in conveying to the driver that a malfunction has occurred which may require diagnosis and service by a repair facility. Thus, we are revising Table 1 of FMVSS No. 101 to include a note referring to the ESC malfunction telltale that states:

> This symbol may also be used to indicate the malfunction of related systems/functions including traction control, trailer stability assist, corner brake control, and other similar functions that use throttle and/or individual torque control to operate and share common components with the ESC system.

(b) ''ESC Off'' Indication

If the vehicle manufacturer chooses to install a driver-selectable control (an ''ESC Off'' control) that places the ESC system in a mode that does not satisfy the performance requirements of the standard, then the proposal would require the manufacturer to provide an ''ESC Off'' telltale to alert the driver when the vehicle has been placed in such a mode (*see* S5.4.2). Specifically, the NPRM proposed that the ''ESC Off'' switch and telltale must be identified by the symbol shown for ''ESC Off'' in Table 1 of Standard No. 101 (49 CFR 571.101) (*see* S5.4.3), and the telltale must be mounted inside the occupant compartment in front of and in clear view of the driver (*see* S5.4.4). The ESC telltale symbol indicating ''ESC Off'' proposed by NHTSA consists of the ISO symbol J.14 with the English word, ''Off,'' beneath it. No text substitution for the ''ESC Off'' telltale was offered as part of the proposal.

It further proposed that the ''ESC Off'' telltale remain continuously illuminated

for as long as the ESC is in a mode that renders it unable to satisfy the requirements of S5.2.1, S5.2.2 and S5.2.3 (*see* S5.4.5), and except as provided in paragraph S5.4.7, each ''ESC Off'' telltale must be activated as a check of lamp function either when the ignition locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position (*see* S5.4.6). The ''ESC Off'' telltale would not need to be activated when a starter interlock is in operation (*see* S5.4.7). The ''ESC Off'' telltale would be required to extinguish after the ESC system has been returned to its fully functional default mode (*see* S5.4.8).

Several commenters raised specific issues pertaining to the ESC Off control and telltale, which are set forth and addressed below.

(i) ''ESC Off'' Symbol Alternative: Use of Text

In their comments, the Alliance/AIAM asked the agency to permit the use of the text ''ESC Off'' without the ISO symbol (J.14) to indicate that the ESC system has been switched off. The commenters argued that such approach is consistent with other FMVSS No. 101 Table 1 indicators.

Pursuant to the discussion in Section IV.C.9(a)(ii) above, NHTSA has decided to revise S5.4.3 (now S5.4.2 and S5.5.2) to permit use of the term ''ESC Off'' at the manufacturer's discretion as follows:

S5.4.2 Effective September 1, 2011, a control whose only purpose is to place the ESC system in a mode in which it will no longer satisfy the performance requirements of S5.2.1, S5.2.2 and S5.2.3 must be identified by the symbol shown for ''ESC Off'' in Table 1 of Standard No. 101 (49 CFR 571.101) or the text, ''ESC Off'' as listed under ''Word(s) or Abbreviations'' in Table 1 of Standard No. 101 (49 CFR 571.101); * * *

S5.5.2 Effective September 1, 2011, the ''ESC Off'' telltale must be identified by the symbol shown for ''ESC Off'' in Table 1 of Standard No. 101 (49 CFR 571.101) or the text, ''ESC Off'' as listed under ''Word(s) or Abbreviations'' in Table 1 of Standard No. 101 (49 CFR 571.101).

(ii) Waiver of Yellow Color Requirement When ''ESC Off'' Is Indicated Via Message/Information Center Text

In their comments, the Alliance/AIAM requested a waiver of the yellow color requirement when ''ESC Off'' indications are provided via the vehicle's message/information center, due to the difficulty associated with providing color in a message/information center. (Porsche made a similar comment.)

As explained in Section IV.C.9(a)(iii) above, the use of message/information centers for presentation of required ESC information is permissible to the extent that the requirements of FMVSS No. 101 are met (*see* 49 CFR 571.101 and discussion in Section IV.C.9(a)(ii) immediately above). The intent of the color requirements specified in Table 1 of FMVSS No. 101 is that the color yellow be used to communicate to the driver a condition of compromised performance of a vehicle system that does not require immediate correction. The International Standards Organization in its standard titled, ''Road Vehicles—Symbols for controls, indicators, and tell-tales'' (ISO 2575:2004(E)), agrees with this practice through its statement of the meaning of the color yellow as ''yellow or amber: Caution, outside normal operating limits, vehicle system malfunction, damage to vehicle likely, or other condition which may produce hazard in the longer term.''

NHTSA believes that operating ESC in a mode other than ''full on'' qualifies as a condition of ''compromised performance.'' Therefore, NHTSA believes that the yellow color requirement must be maintained in order to properly communicate the condition of potentially decreased safety to the driver. Accordingly, NHTSA has decided to deny the request for waiver of the yellow color requirement for the ''ESC Off'' telltale or substitute text when a message/information center is used. As noted in Section IV.C.9(a)(iii), this decision is consistent with the identical issues raised in petitions for reconsideration of the TPMS rule.

(iii) ''ESC Off'' Telltale Clarification

The Alliance/AIAM recommended that the final rule should clarify that the ''ESC Off'' telltale can be illuminated whenever the ESC system is in a mode other than the fully active system, even if, at that level, the system would meet the requirements of FMVSS No. 126.

As discussed above, paragraph S5.4 of the NPRM proposed to require that the ''ESC Off'' telltale must remain continuously illuminated for as long as the ESC is in a driver-selected mode that renders it unable to satisfy the requirements of S5.2.1, S5.2.2 and S5.2.3 (*see* S5.4.5). In their comments, the Alliance/AIAM suggested that manufacturers should be permitted to use the ''ESC Off'' telltale to alert the driver that the system is in a mode less than fully active, regardless of whether it could meet the requirements of S5.2.1, S5.2.2 and S5.2.3 at that level. After careful consideration, NHTSA agrees that permitting vehicle manufacturers to employ an illumination strategy as suggested by the Alliance/AIAM may help to remind drivers when their vehicle's ESC system has been placed in a mode of less than maximal effectiveness and to encourage them to rapidly return the system to fully-functional status. Certain modifications to the regulatory text are required to achieve this result, because S5.3.1(e) of FMVSS 101 reads, ''A telltale must not emit light except when identifying the malfunction or vehicle condition it is designed to indicate, or during a bulb check.'' Accordingly, it is necessary to add the following new paragraph S5.5.5 (renumbering subsequent paragraphs):

Notwithstanding S5.3.1(e) of 49 CFR 571.101, the vehicle manufacturer may use the ''ESC Off'' telltale to indicate an ESC level of function other than the fully functional default mode even if the vehicle would meet S5.2.1, S5.2.2 and S5.2.3 at that level of ESC function.

(iv) ''ESC Off'' Telltale Strategy

Porsche sought clarification that the following ESC telltale illumination strategy would be permissible: If the ESC is deactivated by the driver, illuminate the ESC symbol in the instrument panel (by which we assume Porsche means the ESC malfunction symbol and not the ''ESC Off'' symbol), provide a ''PSM OFF'' message in the message/information center, and illuminate a yellow light-emitting diode (LED) in the ''ESC Off'' button which is in clear view of the driver.

In response to Porsche's comment, we note that paragraph S5.3 of the NPRM states that the ESC malfunction telltale shall be illuminated ''* * * after the occurrence of one or more malfunctions.'' Manual disablement of the ESC by the driver does not constitute an ESC malfunction. Furthermore, paragraph S5.3.1(e) of FMVSS 101 requires, ''A telltale must not emit light except when identifying the malfunction or vehicle condition it is designed to indicate, or during a bulb check.'' Thus, the ESC malfunction telltale can only be used when a malfunction exists.

NHTSA is concerned that if the ESC malfunction telltale were permitted to be presented simultaneously with the ''ESC Off'' telltale, drivers would be unable to distinguish whether the system had been switched off or whether a malfunction had occurred. Therefore, presentation of the ESC malfunction telltale in addition to an ''ESC Off'' indication when ESC has been disabled via the driver-selectable

control and no system malfunction exists is prohibited.

(v) Use of Two-Part Telltales

Porsche stated that vehicle manufacturers should be permitted the flexibility to use two adjacent telltales, one containing the ISO symbol for the proposed yellow ESC malfunction indicator and another yellow telltale with the word ''Off.'' Porsche stated that given the limited space available on the instrument clusters in their vehicles, this dual-purpose combination should be permissible. The Alliance/AIAM offered the same comment, arguing that this approach would increase efficiency by allowing one lamp to be illuminated to indicate ESC malfunction and both to be illuminated to indicate that the system has been turned off or placed in a mode other than the ''full on'' mode.

NHTSA acknowledges the commenters'' concerns regarding limited instrument panel area available for locating telltales. However, we are not adopting the commenters' recommendation, because allowing a two-part telltale in such manner would create conflicting regulatory requirements, as discussed below.

Indication of a malfunction condition must always be the predominant visual indication provided to the driver by a telltale. As a result, if a two-part ESC telltale were used and an ESC malfunction occurred, only the malfunction portion of the telltale could be illuminated. Paragraphs S5.4.2 and S5.4.3 of the proposed regulatory text state that a telltale consisting of the symbol for ''ESC Off'' or substitute text (as indicated in Table 1 of FMVSS No. 101) must be illuminated when a control input to the ESC switch (*i.e.*, control) has been made by the driver to put the vehicle into a non-compliant ESC mode. If a two-part telltale were used, and an ESC malfunction condition occurred after the ESC had been turned off by the driver, the malfunction indication would take precedence over the ''off'' indication, thereby requiring that the ''off'' portion of the two-part telltale be extinguished. This situation would be in conflict with S5.4.2 of the proposed regulatory text. Due to this conflict, NHTSA has decided to deny the request to permit use of a two-part ESC telltale.

(vi) Conditions for Illumination of the ''ESC Off'' Telltale: Speed

The Alliance/AIAM sought clarification that the ''ESC Off'' telltale (if provided) need not illuminate when the vehicle is traveling below the low-speed threshold at which the ESC system becomes operational.

We note that under paragraph S5.1.2, NHTSA's proposal states that the ESC system must be ''* * * operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC or when the vehicle is below a speed threshold where loss of control is unlikely.'' Thus, NHTSA's proposal provides that the ESC system need not be functional when the vehicle is traveling at low speeds.

Paragraph S5.4.2 of FMVSS No. 126 requires the vehicle manufacturer to illuminate the ''ESC Off'' telltale when the ''vehicle has been put into a mode that renders it unable to satisfy the requirements of S5.2.1, S5.2.2 and S5.2.3.'' Driving a vehicle at low speeds does not equate with the vehicle operator actively using a driver-selectable control that places the ESC system ''into a mode in which it will not satisfy the requirements of S5.2,'' as stated in S5.4. Therefore, NHTSA believes that the proposed language does not imply that the ''ESC Off'' telltale must be illuminated when the vehicle is traveling at low speeds and is sufficiently clear in defining the conditions under which the ''ESC Off'' telltale must be illuminated. As a result, NHTSA has determined that no revisions to the proposed regulatory language are necessary to address this issue.

(vii) Conditions for Illumination of the ''ESC Off'' Telltale: Direction

The Alliance/AIAM, Bosch, Continental, Delphi, and Nissan commented that the final rule should be modified to clarify that there is no need to illuminate the ''ESC Off'' telltale when the vehicle is driven in reverse, because triggering the telltale under those circumstances could result in driver confusion.

As discussed under Section IV.C.6(f) above, NHTSA did not intend to require the ESC system to be operable when the vehicle is driven in reverse, because such a requirement would necessitate costly changes to current ESC systems with no anticipated safety benefit. Furthermore, we have decided in the final rule to modify the regulatory language in S4 of FMVSS No. 126 to clarify that ESC is intended to function ''over the full speed range of the vehicle (except at vehicle speeds less than 15km/h (9.3 mph) or when being driven in reverse). In such instances, the ESC system has not been turned off, but instead, it has encountered a situation in which, by regulation, the ESC system need not operate; once the vehicle is returned to forward motion at a speed above the minimum threshold, one would presume that the ESC system would return to normal operation automatically.

Requiring the ''ESC Off'' telltale to illuminate frequently (given that reversing the vehicle and low-speed driving are routine occurrences) would certainly be perceived as a nuisance by drivers and might even be mistaken for a system malfunction. Furthermore, we note that paragraph S5.4.2 of the NHTSA proposal comes under the heading and is in the context of the ''ESC Off'' Switch and Telltale (*see* S5.4). Those provisions already stated that the ''ESC Off'' indicator must be illuminated when the ESC system is manually disabled (*i.e.*, placed in a non-compliant mode) by the driver via the ''ESC Off'' switch. For these reasons, the agency does not believe that any change to the regulatory text is necessary to clarify that the ''ESC Off'' telltale need not be illuminated when the vehicle is in reverse gear.

(c) Alerting the Driver of ESC Activation

As noted above, paragraph S5.3.7 of the NPRM stated that manufacturers may use the ESC malfunction telltale in a flashing mode to indicate ESC operation. However, as was also stated in the NPRM, NHTSA has not identified any safety need that would justify a requirement for provision of an ESC activation indicator to alert the driver that the ESC system is intervening during a loss-of-control situation.[58] The NPRM also stated that the agency does not recommend use of an auditory indication of ESC activation.[59]

(i) Visual and Auditory Indications of ESC Activation

Regarding the issue of provision of an indication of ESC activation to the driver, commenters offered a variety of viewpoints. In overview, the Alliance/AIAM expressed support for a visual telltale. Consumers Union and Toyota expressed support for both visual and auditory indications. Advocates expressed support for a steady-burning telltale, and Public Citizen stated that an activation telltale is unnecessary and potentially distracting to the driver. These comments are summarized in detail below.

The Alliance/AIAM expressed support for allowing the ESC telltale to be used, at the manufacturer's option, to indicate an ESC operating or ''intervention'' event to the driver.

Consumers Union challenged the agency's data suggesting that visual and

[58] 71 FR 54729 (Sept. 18, 2006).

[59] *Id.*

audible warnings to the driver when the ESC system has been activated provide little or no safety benefit. The organization stated that testing by its own engineers suggested that such warnings are helpful, in that they may alert drivers earlier regarding slippery road conditions, thereby causing the driver to slow down in anticipation of a potential hazard. Accordingly, Consumers Union requested that the agency either include a requirement for visual and audible warnings of ESC operation in the final rule or at least conduct additional research before deciding to exclude such requirement.

In its comments, the Advocates stated that NHTSA should allow ESC telltales to be lit or not lit at the manufacturer's discretion when ESC intervenes, but, if lit, the telltale should not be allowed to flash. The commenter cited the agency's own study, which it interpreted as suggesting that flashing illumination increases driver distraction. The commenter also faulted the agency for making a tentative determination that a flashing ESC telltale was not shown to result in a measurable consequence in terms of roadway departures, arguing that the agency should have disclosed that the portion of the November 2005 study [60] upon which it relied had data from only 20 subjects in a driving simulator. The Advocates opined that this small sample size results in low statistical power for generalization.

The Advocates also expressed concern that a flashing telltale could elicit a panic reaction in some drivers or be confused with an ESC malfunction (since an increasing number of telltales are being wired to flash to indicate malfunction of the given system). The commenter expressed concern that ESC is not an ''automatic'' technology, in that it will only attempt to correct the vehicle's path if the driver is actively steering. The Advocates argued that if a driver panics and fails to even attempt to steer the vehicle, then the ESC system cannot intervene to compensate for a loss of lateral stability.

The Advocates argued that there is no support in the rulemaking record for allowing the ESC telltale to flash, but instead, that approach is arbitrary in that it contradicts the contrary evidence presented in NHTSA's own limited study (*i.e.*, one showing increased eye glance distributions away from the roadway). Instead, the commenter characterized this issue as the agency again seeking to permit continuation of certain current, suboptimal ESC systems. For these reasons, the commenter argued that a flashing ESC telltale could be detrimental to safety, so this aspect of the agency proposal should be reconsidered.

Public Citizen commented that NHTSA's position on telltales is sound. Public Citizen stated its belief that a telltale for ESC activation indication is unnecessary and argued that its position is supported by NHTSA's own study, which did not show such indicators to provide any benefit. Further, Public Citizen stated concern that an ESC activation telltale may create a distraction for drivers or lead to annoyance, which may cause drivers to deactivate the ESC system.

Toyota asked whether their current strategy of providing both visual (flashing) and auditory indications of ESC activation indication would be permissible. The commenter correctly stated NHTSA research results as showing that there were increased road departures and the average glance time was approximately twice as long for participants presented with an auditory-only indication of ESC activation as compared to those presented with a steady-burning telltale, flashing telltale, or no telltale. Toyota postulated that those responses resulted from the driver searching for a visual indicator to explain the meaning of the auditory indicator. Toyota noted that the NHTSA study did not test a condition in which an auditory indication of ESC activation is presented in addition to the flashing ESC telltale, as they currently provide in their vehicles, and, therefore, the commenter believes that NHTSA's recommendation not to use an auditory indicator refers to an auditory-only indication, and not to a system such as Toyota's that provides both visual and auditory indications to the driver.

After careful consideration of the numerous public comments raising this issue, the agency has decided to retain the approach toward ESC activation warnings presented in the NPRM for the reasons that follow. In a survey conducted in the early phases of NHTSA's human factors research relating to ESC,[61] we examined 28 vehicles equipped with ESC systems and found that all manufacturers appeared to provide a visual indication of ESC activation. The study found that a majority of vehicle manufacturers provided such indication using a symbol, while a few indicated ESC activation using text. Each vehicle examined that used a symbol to indicate ESC activation did so by flashing the telltale. Owner's manuals examined typically indicated that the purpose of the flashing telltale was to inform the driver that the ESC was ''active'' or ''working.''

As discussed in NHTSA's proposal, the safety need for an ESC activation indicator to alert the driver during an emergency situation that ESC is intervening is not obvious. It would seem that with ESC, as with anti-lock brake systems, vehicle stability would be increased regardless of whether feedback was provided to inform the driver that a safety system had intervened. No data have been provided to NHTSA to suggest that safety benefits are enhanced by alerting the driver of ESC activations. Nevertheless, the agency's current research on the topic of ESC activation warnings supports the NPRM's current approach (with which the Alliance/AIAM and Public Citizen agree) that an ESC activation indication should neither be prohibited nor required, as explained below.

The results of recent NHTSA research [62] neither show that alerting a driver to ESC activation provides a safety benefit, nor that it may prove to be a source of distraction that could lead to adverse safety consequences. Our research shows that drivers presented with the flashing telltale were more likely to glance at the instrument panel and that these drivers typically glanced at the panel twice, rather than just once as for the steady-burning telltale or no telltale. Insofar as a flashing telltale draws a driver's attention away from the road, where we believe it should be during an emergency loss-of-control situation, we cannot logically require it. Although the Consumers Union commented that ''their own testing resulted in [their] engineers finding these warnings were helpful and alerted them earlier in their driving to the possibility of slippery conditions before an emergency situation may occur,'' the commenter provided no indication of whether the telltale flashed because of the activation of the ESC system itself, or due to other traction control interventions, which are often connected with the ESC telltale. NHTSA agrees that it makes sense to alert drivers to slick road conditions when the driver is operating the vehicle on the roadway in a generally straight path, but disagrees that it would make sense to draw the driver's attention away from the road when they are in the midst of assessing a crash-imminent situation and attempting to avoid a collision.

While NHTSA's research to date showed that drivers looked at a flashing

[60] Mazzae, E. *et al., The Effectiveness of ESC and Related Telltales: NADS Wet Pavement Study,* (Telltale Study) DOT HS 809 978, NHTSA (November 2005) (Docket No. NHTSA–2006–25801–7).

[61] *Id.*

[62] *Id.*

telltale twice as often, this did not result in significantly different rates for loss of control, road departures, and collisions than with steady-burning telltales or no telltales. Thus, despite the logical risk of looking away from the road during an ESC-worthy maneuver, we found no apparent detriment from the increased glances at a flashing telltale. NHTSA therefore cannot agree with Advocates' comment that NHTSA should allow ESC telltales to be lit or not lit at the manufacturer's discretion when ESC intervenes, but that lit telltales should not be allowed to flash, because the flashing might lead to driver distraction or panic. Currently available research results are insufficient to support prohibition of the existing practice of providing a visual indication of ESC activation, but neither do they support requiring it. Although Consumers Union engineers have performed their own informal study, the agency does not consider their results (without data being provided), to offer sufficient justification for requiring a visual indication of ESC activation.

Consumers Union requested that the agency either include a requirement for visual and audible warnings of ESC operation in the final rule, or at least conduct additional research before deciding to exclude such a requirement. Advocates also criticized the small sample size of NHTSA's existing research in this area. To both commenters, we respond that, while the existing research had statistically valid sample sizes, additional research is underway to examine driver behavior and crash-imminent situation outcomes as a function of whether a flashing ESC telltale is presented during ESC activation, versus presentation of the icon immediately following ESC activation. Data from this research are being analyzed, and NHTSA hopes that the study results will further clarify which strategy for notifying the driver of ESC activation is least likely to negatively impact the driver's response to a loss-of-control situation. However, unless additional research provides strong, statistically-valid evidence of a benefit or detriment associated with presentation of an ESC activation indication, we will not require or prohibit such an indication.

To NHTSA's knowledge, Toyota is the only manufacturer that currently presents both a visual and an auditory indication of ESC activation. As Toyota correctly pointed out, NHTSA's recent ESC study measured a negative consequence of the presentation of an auditory-only indicator of ESC activation, statistically significant for older drivers in terms of road departures. Approximately twice as many road departures were observed for participants presented with the auditory ESC activation indication as compared to those who were presented with a steady-burning telltale, flashing telltale, or no telltale. For this reason, NHTSA recommended against using an auditory ESC activation indicator in its proposal. Toyota postulated that increased instrument panel glances resulted from the driver searching for a visual indicator to explain the meaning of the auditory indicator. Given that study results showed drivers presented with no visual or auditory indication of ESC activation exhibited instrument panel glances lasting half the duration of those observed in conjunction with presentation of the Toyota auditory ESC indicator, one can only assume that the auditory alert produced the longer glance durations. Toyota has not provided any data to substantiate its apparent assertions that providing simultaneous visual and auditory indicators would result in: (1) Instrument panel glances of similar duration to those observed in the NHTSA study for participants presented with only a visual indicator, and (2) fewer road departures, as were observed in the other ESC activation indication conditions.

Consistent with its research, NHTSA believes that auditory indications of ESC activation are not necessary and provide no apparent safety benefit. However, while NHTSA has conducted research showing that an auditory indication of ESC activation elicits longer instrument panel glances and may be associated with an increase in road departures, we do not consider these results from a single, simulator study to provide sufficient justification to prohibit use of an auditory ESC indicator. Therefore, while we would discourage Toyota's use of an auditory ESC activation warning, even when combined with a visual indication, current data do not justify a prohibition of such approach.

(ii) Flashing Telltale as Indication of Intervention by Related Systems/Functions

Honda and the Alliance/AIAM requested permission to flash the ESC malfunction telltale to indicate the intervention of other related systems, including traction control and trailer stability assist function. Honda reasoned that these functions are directly related to the ESC system and that the driver would experience the same sensations from the braking system actuator and throttle control triggered by operation of these related systems, as they would in the event of ESC activation. In addition to keeping the driver informed, Honda also reasoned that this strategy would aid in minimizing the number of telltales used for related functions. The commenter proposed revising paragraph S5.3.7 as follows: ''The manufacturer may use the ESC malfunction telltale in a flashing mode to indicate ESC operation, *or to indicate operation of functions directly related to stability control such as a traction control program.''*

Because NHTSA is not requiring an ESC activation indication, if vehicle manufacturers choose to provide one, they may use it to indicate interventions by additional related systems in their discretion. We expect that manufacturers would explain the meaning and scope of the activation indication in the vehicle owner's manual, consistent with facilitating consumer understanding of important vehicle safety features.

(d) Bulb Check

Except when a starter interlock is in operation, the NPRM proposed to require that each ESC malfunction telltale and each ''ESC Off'' telltale must be activated as a check of lamp function either when the ignition locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position (*see* S5.3.4 and S5.5.6).

(i) Waiver of Bulb Check for Message/Information Centers

Regarding the NPRM's proposed bulb check requirements, the Alliance/AIAM stated that while such requirements are appropriate for traditional telltales, those requirements are not appropriate for vehicle message/information centers which do not use bulbs and are illuminated whenever the vehicle is operating. According to the commenters, if there were a problem of this type, it would be readily apparent because the entire message/information center would be blank. Therefore, the Alliance/AIAM requested that in the final rule, the agency exclude ESC system status indications provided through a message/information center from the standard's bulb check requirements. (Porsche provided a similar comment on this issue.)

As indicated in paragraphs S5.3.4 and S5.5.6, any ESC status information presented via a telltale must have a bulb check performed for that telltale. However, NHTSA agrees with the commenters that a bulb check is not

relevant or necessary for the type of display technology utilized for information/message centers. Presumably, if an information/message center experiences a problem analogous to one which would be found by a telltale's bulb check, the entire message center would be non-operational, a situation likely to be rapidly discovered by the driver. Therefore, we have decided to waive the bulb check requirement under FMVSS No. 126 for ESC system status indications provided via a message/information center. In response to these comments, we are adding new paragraphs S5.3.6 and S5.5.8 as follows:

S5.3.6 The requirement S5.3.4 does not apply to telltales shown in a common space.
* * *

* * * * *

S5.5.8 The requirement S5.5.6 does not apply to telltales shown in a common space.

(ii) Clarification Regarding Bulb Check

TRW Automotive recommended that as part of the final rule, the agency clarify that under paragraph S7.2, *Telltale bulb check*, of the proposed test procedures, the bulb check for the ESC malfunction telltale and ESC Off telltale (if provided) may be performed by any vehicle system and is not required to be conducted by the ESC system itself. According to TRW Automotive, many vehicle systems are able to perform this function, and most current vehicles are designed such that the instrument panel controls the telltales. Thus, the commenter recommended that the last sentence of S7.2 (consistent with paragraphs S5.3.4 and S5.4.6) be revised to read as follows: ''The ESC malfunction telltale must be activated as a check of lamp function for the ESC malfunction telltale, and if equipped, the ''ESC Off'' telltale, as specified in S5.3.4 and S5.4.6.''

NHTSA is not concerned with the precise mechanism of how the bulb check for an ESC-related telltale is accomplished, provided that this performance requirement is met. Accordingly, we have decided to modify S7.2 by adopting the language recommended by TRW Automotive.

10. System Disablement and the ''ESC Off'' Control

Under paragraph S5.4, the NPRM proposed to permit manufacturers to provide a driver-selectable switch that places the ESC system in a mode in which it will not satisfy the performance requirements of the standard. However, if an ''ESC Off'' switch is provided, the vehicle's ESC system must always return to a mode that satisfies the requirements of the standard at the initiation of each new ignition cycle, regardless of what mode the driver had previously selected (*see* S5.4.1). If the system has more than one mode that satisfies these requirements, the default mode must be the mode that satisfies the performance requirements by the greatest margin (*see* S5.4.1).

Under the proposal, if an ''ESC Off'' switch is provided, the vehicle manufacturer must also provide a telltale indicating that the vehicle has been put into a mode that renders it unable to satisfy the requirements of the standard (*see* S5.4.2). The ''ESC Off'' switch and telltale must be identified by the symbol shown for ''ESC Off'' in Table 1 of Standard No. 101 (49 CFR 571.101) (*see* S5.4.3). (For further details of the telltales and symbols for the ''ESC Off'' switch and telltale (and issues relating thereto), see section IV.C.9 above.)

Commenters raised a number of issues regarding these provisions pertaining to system disablement and the ''ESC Off'' switch. Most commenters agreed that there may be a need to disengage the ESC system in certain driving situations (*e.g.*, to gain traction in snow, mud). General comments on this issue (*e.g.*, appropriateness and reach of the system disablement provision) are discussed immediately below, followed by more detailed, technical comments.

(a) Provision of an ''ESC Off'' Control

In its comments, IIHS supported inclusion of an ESC off switch, because it agreed that there are situations in which the system would need to be disabled (*e.g.*, initiating movement in deep snow). IIHS also supported the proposal to have a default mode of ''on'' for the ESC each time the vehicle is started.

Mr. Petkun supported the proposal's tentative decision to permit vehicle manufacturers to install ESC off switches, stating that a driver may need to disable the ESC system when a vehicle is stuck in a deformable surface such as mud or snow, or when a compact spare tire, tires of mismatched sizes, or tires with chains are installed on the vehicle. He agreed that vehicle manufacturers should provide an easily identifiable telltale to indicate when the vehicle has been placed in a mode that completely disables the ESC system.

In contrast to the comments above, the Advocates stated that the proposal's policy for ESC on-off switches is too liberal and may place motorists at risk. Although it agreed that there may be justification for temporary ESC disablement where the vehicle needs full longitudinal tire traction for negotiating mud, gravel, or snow, the commenter did not support ESC disablement for the purpose of increasing ''driving enjoyment'' (similar comment from Public Citizen). The organization was particularly skeptical of the rationale related to racing, arguing that this small minority of drivers can disable their ESC systems by other (unspecified) means. The Advocates' comments suggested that ESC disablement could result in the loss of benefits of an active ESC system for long distances or considerable periods of time until the start of the next ignition cycle. Furthermore, Advocates expressed concerns that turning off the ESC system could also disable ABS operation, thereby negatively impacting vehicle safety.

In addition, the Advocates made an analogous argument that NHTSA's sister agency, the Federal Motor Carrier Safety Administration (FMCSA), issued a report [63] in 2005 which recommended that in no case should drivers of vehicles greater than 10,000 pounds GVWR be allowed to disable a Vehicle Stability System (either roll stability control or ESC). The commenter argued that this is another reason for the agency to reconsider the ease with which a driver could use an ESC disabling switch for vehicles under 10,000 pounds GVWR.

Advocates suggested that it may be unnecessary to permit ESC disablement, if ESC systems can operate in conjunction with vehicle traction control systems. According to the Advocates, if the agency continues to believe that ESC disablement switches should be permitted, disablement should require either: (1) A long switch engagement period, or (2) sequential switch engagement actions.

Despite the reservations of some commenters, NHTSA continues to believe that provision of a control for temporarily disabling ESC will enhance safety. The rationale for this position is detailed below.

First, we acknowledge that driving situations exist in which ESC operation may not be helpful, most notably in conditions of winter travel (*e.g.*, driving with snow chains, initiating movement in deep snow). ESC determines the speed at which the vehicle is traveling via the wheel speeds, rather than using an accelerometer or other sensor. While NHTSA is only requiring ESC to operate at travel speeds of 15 kph (9.3 mph) and greater, some manufacturers may choose to design their ESC systems to operate

[63] A. Houser, J. Pierowicz, *Concept of Operations and Voluntary Operational Requirements for Vehicular Stability Systems (VSS) On-Board Commercial Motor Vehicles*, FMCSA–MCRR–05–006 (July 2005).

at lower speeds. Thus, drivers trying to work their way out of being stuck in deep snow may induce wheel spinning that implies a high enough travel speed to engage the ESC to intervene, thereby hindering the driver's ability to free the vehicle.

Second, NHTSA is concerned that if a control is not provided to permit drivers to disable ESC when they choose to, some drivers may find their own, permanent way to disable ESC completely. This permanent elimination of this important safety system would likely result in the driver losing the benefit of ESC for the life of the vehicle. However, as currently designed, ESC systems retain some residual safety benefits when they are ''switched off'' and they also become operational again at the next ignition cycle of the vehicle. NHTSA feels that provision of this type of temporary ''ESC Off'' control is the best strategy for dealing with such situations.

While we acknowledge FMCSA's recommendation that drivers of vehicles with a GVWR greater than 10,000 pounds should not be permitted to disable a Vehicle Stability System, those vehicles generally have very different handling characteristics than the light vehicles subject to today's final rule. Furthermore, the operators of those vehicles in many cases may be expected to have different motivations for driving (*i.e.*, driving for personal reasons, rather than work reasons). Accordingly, we do not believe that the referenced FMCSA recommendation would alter the identified safety need discussed above to allow vehicle manufacturers to include an ''ESC Off'' control on certain light vehicles equipped with an ESC system.

In response to Advocates' suggestion that it may be unnecessary to permit ESC disablement if ESC systems can operate in conjunction with traction control, NHTSA does not believe that ESC disablement should be prohibited on this basis. This rule mandates ESC, not traction control, for new vehicles. For vehicles equipped with ESC but not with traction control, ESC disablement may be necessary in certain situations, as described above. Mandating traction control as well as ESC, as Advocates' suggestion would entail, is beyond the scope of this rulemaking.

(b) Switch for Complete ESC Deactivation

Consumers Union stated that for certain sporty models, NHTSA could permit a separate mode (perhaps activated with a switch) which would give the driver discretion to completely disable the ESC for race track use (similar comments by Mr. Cheah and Mr. Kiefer). Mr. Kiefer added that this disablement mechanism, which would fully and permanently disable the vehicle's ESC system, should shut down any vehicle subsystem that intervenes in the vehicle's performance, although he agreed that exceptions may be warranted (*e.g.*, where the driver wishes to keep ABS operative).

The proposed regulatory text states that the ''manufacturer may include a driver-selectable switch that places the ESC system in a mode in which it will not satisfy the performance requirements'' specified by NHTSA (*see* S5.4 of the NPRM). Because NHTSA is permitting, rather than requiring such a switch and is not specifying the extent to which ESC function must be reduced via the switch, manufacturers have the freedom to provide drivers with a switch that has the ability to completely disable ESC. Thus, NHTSA believes that the regulatory text as originally drafted sufficiently addresses the commenters' concerns regarding this issue.

(c) ESC Operation After Malfunction and ''ESC Off'' Control Override

Honda expressed concern that when an ESC malfunction is detected, some drivers may respond by pressing the ESC Off control (if one is provided). According to Honda, not all ESC malfunctions may render the system totally inoperable, so there may be benefits to ensuring that the system remains active in those cases. Thus, the commenter urged the agency to permit manufacturers to disable the ESC Off control in those instances where an ESC malfunction has been indicated. Honda recommended adding a new provision to S5.4 stating, ''*Operation of the ESC off switch may be disabled when the ESC malfunction telltale is illuminated.*''

In addition, Honda's comments also stated that the company's current ESC system designs contain a logic that permits the system to override the ''ESC Off'' control in certain appropriate situations (*e.g.*, when the TPMS system detects low tire pressure or a TPMS system malfunction such as when a spare tire is in use). Honda argued that at such times, the benefits of ESC operational availability are more important than the ability to disable the system. The company further argued that because the ESC Off control is permitted at the vehicle manufacturer's option, the manufacturer should be accorded discretion to appropriately limit the operation of that off control.

We agree with the commenter's reasoning on both of these issues. It was never the agency's intention to require that just because the manufacturer permits the ESC system to be disabled under some circumstances, the manufacturer must allow it to be disabled at *all* times. If the vehicle manufacturer believes a situation has occurred in which it should not be possible to turn ESC off, then the manufacturer should be permitted to override the operation of the ''ESC Off'' control. Honda's example of an ESC system malfunction after which the driver triggers the ''ESC Off'' switch is illustrative of such a situation; in such cases, the vehicle operator presumably had desired to maintain ESC functionality while driving, so the driver's action to turn the system off arguably reflects a reflex reaction that the system is unavailable and must be shut down, rather than a reasoned decision to forgo any residual ESC benefits that might remain in spite of the malfunction.

Similarly, it was not the agency's intention to require the ESC system to remain disabled if the vehicle manufacturer believes a situation has occurred in which ESC should again become functional. We do not believe that any changes to the regulatory text are necessary regarding this issue.

(d) Default to ''ESC On'' Status

Although Consumers Union acknowledged that there may be certain situations in which ESC disablement may be appropriate (*e.g.*, vehicles stuck in snow or mud), it did not support the proposed requirement that the ESC system be permitted to remain disabled until the next ignition cycle (*i.e.*, default mode upon vehicle start-up be ESC ''on''). The commenter argued that the driver may inadvertently forget to reengage the ESC for the remainder of the current trip by turning the ignition off and then on again. Thus, Consumers Union recommended that the standard should require that, once disabled, the ESC system must again become operational once the vehicle has reached a speed of 25 mph.

Public Citizen expressed support for a default setting of ''on'' for ESC systems at the start of each ignition cycle (similar comment by Mr. Petkun). However, Public Citizen argued that waiting for the next ignition cycle to require reengagement of the ESC system needlessly compromises potential safety benefits. Accordingly, Public Citizen urged the agency to consider other alternatives, such as a time-delay reminder to re-enable the system or some other means of automatic re-enablement.

In response to these comments, we note that while paragraph S5.4.1 of the

proposed regulation states that ''[t]he vehicle's ESC system must always return to a mode that satisfies the requirements of S5.1 and S5.2 at the initiation of each new ignition cycle,'' manufacturers have the freedom to equip their vehicles with ESC systems that return to a compliant mode sooner, based upon an automatic speed trigger or timeout.

As discussed in Section IV.C.10(a) above, NHTSA noted two situations in which drivers may desire to turn off ESC, specifically when a vehicle is stuck in the snow and when a driver chooses to engage in sporty driving or racing. The latter of these two situations is the only one that warrants a potentially more prolonged delay of ESC re-enablement until the next ignition cycle. However, if the agency were to require automatic reengagement of a fully-functional ESC mode after a certain time delay or upon the vehicle reaching a certain speed threshold, many vehicle operators might face a considerable obstacle if they wished to continue engaging in sports driving. As mentioned above, we believe that there could be safety disbenefits associated with sports drivers who try to permanently disable the ESC system themselves.

Nevertheless, NHTSA believes that many vehicle manufacturers will equip vehicles that are not of a ''sport'' class with ESC systems that automatically re-engage the operation of the ESC system based on some threshold reached during the ignition cycle. Given our assessment of the situation, NHTSA does not believe it necessary or advisable to specify more stringent requirements for returning ESC to a compliant mode.

(e) Operation of Vehicle in 4WD Low Modes

The Alliance/AIAM, Bosch, Continental, Delphi, and Nissan all stated that there are certain situation in which the ESC system would not be able to default to ''on'' status at the start of a new ignition cycle. As an example, Bosch stated that there are certain vehicle operational modes in which the driver intends to optimize traction, not stability (*e.g.*, 4WD-locked high, 4WD-locked low, locking front/rear differentials). The commenters argued that an exception should be made in FMVSS No. 126 for when drivers select ESC modes for four-wheel drive low, has locked the vehicle's differentials, or has placed the vehicle in other special off-road chassis modes. According to the commenters, transition to one of these modes is mechanical and cannot be automatically reverted to ''on'' status at the start of each new ignition cycle.

The commenters suggested that this approach would be consistent with safety because the operating conditions for these vehicle modes tend to involve low-speed driving. The Alliance/AIAM added that in those cases, the ESC ''Off'' telltale should be illuminated, in order to remind the driver of the ESC system's status as being unavailable. Bosch recommended modifying paragraph S5.4.1 to read as follows: ''The vehicle's stability control system must always return to a mode which satisfies the requirements of S5.1 and S5.2 at the initiation of each new ignition cycle, regardless of the mode the driver had previously selected, except if that mode was specifically for enhanced traction during low-speed, off-road driving.''

We agree with the commenters that when a vehicle has been intentionally placed in a mode specifically intended for enhanced traction during low-speed, off-road driving via mechanical means (*e.g.*, levers, switches) and in this mode ESC is always disabled, it is not sensible to require the ESC system to be returned to enabled status just because the ignition has been cycled. In these situations, keeping the ESC disabled and illuminating the ESC ''Off'' telltale, in order to remind the driver of the ESC system's status as being unavailable, makes more sense. We agree with the comment that making this change to the regulatory text should have no substantial effect on safety because the operating conditions for these vehicle modes tend to involve low-speed driving.

In revising the regulatory text pertaining to this issue, we have adopted Bosch's recommended language, except that a clause has been added to limit applicability to situations where the vehicle's mode transition is accomplished via mechanical means. We note that if the vehicle's mode transition is accomplished via electronic means, then the vehicle can reset itself to a normal traction mode, and the ESC to active status, with each ignition cycle. Accordingly, paragraph S5.4.1 has been revised to read as follows:

S5.4.1 The vehicle's ESC system must always return to a mode that satisfies the requirements of S5.1 and S5.2 at the initiation of each new ignition cycle, regardless of what mode the driver had previously selected, except if that mode is specifically for enhanced traction during low-speed, off-road driving and is entered by the driver using a mechanical control that cannot be automatically reset electrically. If the system has more than one mode that satisfies these requirements, the default mode must be the mode that satisfies the performance requirements of S5.2 by the greatest margin.

(f) ''ESC Off'' Control Requirements

Under paragraph S5.4.3 of the NPRM, the agency proposed to require the ''ESC Off'' control, if present, to be identified by the symbol shown for ''ESC Off'' in Table 1 of Standard No. 101 (*i.e.*, the ISO symbol J.14 with the English word ''Off'').

(i) Labeling of the ''ESC Off'' Control

While the Alliance/AIAM agreed that the ''ESC Off'' control should be identified, they argued that vehicle manufacturers should be granted flexibility in terms of how to identify the ''ESC Off'' control. The commenters stated that it is not necessary to standardize the identification of the control because vehicle manufacturers have been providing drivers with more detailed feedback on the ESC operating mode when the system is in other than the default ''full on'' mode. If the agency understands the comment correctly, the Alliance and AIAM are suggesting that because vehicle manufacturers are providing a telltale that would illuminate whenever the system is in a mode other than ''full on,'' they should be permitted discretion to optimize control labeling in ways that would facilitate driver understanding of variable ESC modes (*i.e.*, permitting a message other than ''ESC Off'').

NHTSA shares the commenters' concern for ensuring driver understanding of ESC status. We also agree that it would be beneficial to encourage drivers to select ESC modes other than ''full on'' only when driving conditions warrant. We feel that standard control labeling of an actual ''ESC Off'' control must be maintained and, therefore, manufacturers must identify the ''ESC Off'' control using the specified ''ESC Off'' symbol or ''ESC Off'' text (which may be supplemented with other text and symbols). However, we are distinguishing between an actual ''ESC Off'' control (*i.e.*, one whose function is to put the ESC system in a mode in which it no longer satisfies the requirements of an ESC system, and which accordingly must bear the required ''ESC Off'' labeling) and two other possible types of controls (which would not be required to bear the ''ESC Off'' labeling).

The first control to be clarified as excluded is one which has a different primary purpose (*e.g.*, a control for the selection of low-range 4WD that locks the axles), but which must turn off the ESC system as a consequence of an operational conflict with the function that it controls. In this case, such control would be made confusing by adding ''ESC Off'' to its functional label.

Nevertheless, in such situations, the ''ESC Off'' telltale must illuminate to inform the driver of ESC system status.

The second control to be clarified as excluded is one that changes the mode of ESC to a less aggressive mode than the default mode but which still satisfies the performance criteria of Standard No. 126. In such cases, the manufacturer may label such a control with an identifier other than ''ESC Off,'' and the manufacturer is permitted, but not required, to use the ''ESC Off'' telltale beyond the default mode to signify lesser modes that still satisfy the test criteria.

Accordingly, paragraph S5.4 has been rewritten to address which vehicle controls must be identified with the ''ESC Off'' symbol or ''ESC Off'' text.

(ii) Location of the ''ESC Off'' Control

Nissan stated its understanding that by including the optional ESC off switch in Table 1 of FMVSS No. 101, *Controls and Displays*, such switch is subject to the requirement of S5.3.2.1 that the control be visible to a restrained driver. However, the commenter requested that vehicle manufacturers be provided flexibility in the placement of the ESC off switch for the following reasons. First, Nissan believes that the ESC off switch would be infrequently used during normal driving. Second, the location of the ESC off switch would help ensure that disabling of the ESC reflects a deliberate act by the driver. Accordingly, Nissan requested that the final rule exclude the ESC off switch from the visibility requirements of FMVSS No. 101.

For the reasons that follow, the agency has decided that the ''ESC Off'' switch location must meet the requirements of FMVSS No. 101 S5.1.1, which states that ''[t]he controls listed in Table 1 and in Table 2 must be located so that they are operable by the driver under the conditions of S5.6.2 [*i.e.*, while properly restrained by the seat belt].'' The commenter correctly understood the intent of FMVSS No. 101, in noting the implicit requirement that both telltales and controls be located such that they are visible to a belted driver. We believe that hand-operated controls should be mounted where they are easily visible to the driver so as to minimize visual search time, because safety may be diminished the longer a driver's vision and attention are diverted from the roadway. Furthermore, relative consistency of location across vehicle platforms will promote easy identification of the switch when drivers encounter a new vehicle. Therefore, NHTSA believes that, consistent with S5.1.1 of FMVSS No. 101, it is necessary to require the ''ESC Off'' switch to be located in a position where it is visible to a belted driver.

11. Test Procedures

(a) Accuracy Requirements

Honda requested that the agency specify accuracy requirements for the following measurement instruments used in the ESC test procedures: (1) Yaw rate sensor; (2) steering machine, and (3) lateral acceleration sensor. The commenter stated that such specifications would assist in the self-certification process and the agency's own compliance testing.

The agency has decided that it is not necessary to include sensor specifications as part of the regulatory text of FMVSS No. 126. NHTSA is including these sensor specifications in the NHTSA Laboratory Test Procedures for Standard No. 126. The Laboratory Test Procedures provide detailed instructions to personnel conducting compliance testing for the agency, including test equipment to be used and the limitations on equipment output variability. Including the acceptable equipment output variability parameters in the test procedures does not affect the substance of the standard's requirements, and helps the agency respond as needed to factors affecting the availability of test equipment. The Laboratory Test Procedures will be made available to the public prior to the initiation of FMVSS No. 126 compliance testing, but for those interested, we note here that the sensor specifications of the instrumentation used by the agency's ESC research program and currently planned for use in the compliance testing program are as follows:

*Yaw rate:* Range ±100 degrees/s; Nonlinearity ≤0.05% of full scale.

*Steering machine encoder:* Range ±720 degrees; Resolution ±0.10 degrees (combined resolution of the encoder and D/A converter).

*Accelerometers:* Range ±2 g; Nonlinearity <50μg/g.[2]

The agency emphasizes that there is considerable precedent on the question of what belongs in the regulatory text as compared to what belongs in the compliance test procedure. For example, neither FMVSS No. 138 (*Tire Pressure Monitoring Systems*) nor FMVSS No. 139 (*New Pneumatic Radial Tires for Light Vehicles*) contain accuracy requirements in the standard, but rather include them in the test procedures.

Given how the agency knows that manufacturers design their vehicles to pass compliance tests (*i.e.*, with some margin to allow for test inaccuracy), we anticipate that manufacturers should have no difficulty complying with specifications contained in the test procedures rather than in the standard itself. Manufacturers may base their margins on their own estimates of the repeatability and reproducibility of the Sine with Dwell test. NHTSA has recently completed a major round-robin study with industry examining the reproducibility and repeatability of the test. Industry, as well as NHTSA, has all of the raw data, and as the results are evaluated, we believe that manufacturers will have more than sufficient information to make these decisions.

(b) Tolerances

Under paragraph S7.4, *Brake Conditioning*, the NPRM's proposed test procedures call for the vehicle to undertake a series of stops from either 56 km/h (35 mph) or 72 km/h (45 mph) in order to condition the brakes prior to further testing under the standard (*see* S7.4). In addition, the NPRM called for the vehicle to undertake several passes with sinusoidal steering at 56 km/h (35 mph) to condition the tires (*see* S7.5).

Honda recommended that the agency outline specific tolerances for vehicle speed and deceleration to condition the tires and brakes prior to compliance testing, thereby helping to ensure consistent test conditions.

The agency has decided not to make additional changes to the tire and brake conditioning provisions of the regulatory text based upon Honda's recommendations, because, for the reasons discussed below, we believe the details currently specified in the proposed regulatory text for FMVSS No. 126 are sufficient. The intent of tire conditioning is to wear away mold sheen and to help bring the tires up to test temperature. Minor fluctuations in the vehicle speeds specified in S7.5.1 and S7.5.2 should not have any measurable effect on these objectives. Similarly, we believe minor fluctuations in the maneuver entrance speeds and deceleration specifications provided in S7.4.1 through S7.4.4 will not adversely affect the brake conditioning process. Accordingly, we believe that the commenter's recommended tolerances for vehicle speed and deceleration are unnecessary.

(c) Location of Lateral Accelerometer

Honda recommended that the final rule's test procedures should include detailed specifications on how to calculate lateral acceleration. According to Honda, the NPRM proposed to require calculation of lateral

displacement of the vehicle's center of gravity based upon lateral acceleration of the vehicle's center of gravity. However, the commenter stated that for some vehicles, it may not be possible to install a lateral acceleration sensor at the location of the vehicle's actual center of gravity; in those cases, it reasoned, a correction factor will be necessary to accommodate this different sensor positioning.

We agree with Honda's comment that it may not be possible to install a lateral acceleration sensor at the location of the vehicle's actual center of gravity. For this reason, it is important to provide a coordinate transformation to resolve the measured lateral acceleration values to the vehicle's center of gravity location. The specific equations used to perform this operation, as well as those used to correct lateral acceleration data for the effect of chassis roll angle, will be incorporated into the laboratory test procedure.

(d) Calculation of Lateral Displacement

As noted above, the NPRM proposed that under each test performed under the test conditions of S6 and the test procedure of S7.9, the vehicle would be required to satisfy the responsiveness criterion of S5.2.3 during each of those tests conducted with a steering amplitude of 180 degrees or greater. Specifically, proposed paragraph S5.2.3 provides that lateral displacement of the vehicle center of gravity with respect to its initial straight path must be at least 1.83 m (6 feet) when computed 1.07 seconds after initiation of steering. The NPRM further proposed that the computation of lateral displacement is performed using double integration with respect to time of the measurement of lateral acceleration at the vehicle center of gravity (*see* S5.2.3.1) and that time t=0 for the integration operation is the instant of steering initiation (*see* S5.2.3.2).

Oxford Technical Solutions, Ltd. (Oxford) commented that the proposed ESC test procedures require refinement, because it believes that the same vehicle, when tested at different facilities and by different engineers, may experience differences in lateral displacement of up to 60 cm. Specifically, Oxford identified what it perceived to be problems with the proposed test procedures' computation of lateral displacement and also the repeatability of those procedures.

Regarding lateral displacement computation, Oxford argued that integrating the accelerometer into a rotating reference frame does not compute actual lateral displacement, because with this technique, a vehicle that rotates more (*i.e.*, achieves a higher yaw angle compared to the original straight driving line) will yield a different result, even if the displacement is the same. Although the commenter acknowledged the need to set some value as part of the test (*e.g.*, 1.83 meters, as proposed), it suggested using some term to prevent confusion, such as ''NHTSA Displacement,'' ''ESC Displacement,'' or ''Spin Displacement.'' On this point, Oxford recommended consideration of the following language:

> The ''Spin Displacement'' is a double-integration of a lateral accelerometer over a period of 1.071 seconds and the value has to be 1.83m. The test must be conducted uphill on your VDA to within 5 degrees of the uphill direction. The VDA should have an angle of no more than 2 degrees. The lateral acceleration must be measured to an accuracy of 0.03m/s2, including roll effects. Therefore roll must be measured to an accuracy of 0.2 degrees relative to gravity. The accelerometer must have a linearity and scale factor better than 0.3% and a bandwidth larger than 25 Hz.

Regarding repeatability, Oxford stated that up to 60 cm of difference in lateral displacement could result from small differences in the conduct of testing, including:

- Use of a true lateral displacement measurement (*i.e.*, GPS), as opposed to the proposed accelerometer technique, could result in a 6 cm difference.
- Failure to do a roll correction for the acceleration could result in up to an 18 cm difference.
- Variation for the linearity error of a low-cost accelerometer could result in up to a 2 cm difference.
- Depending upon the rainwater run-off angle of the road, there could be up to a 6 cm difference.
- Variations in the mounting angle of the accelerometer in the vehicle may result in about a 9 cm difference.
- If there is a 20 ms timing error in acquisition, this could result in about an 8 cm difference.
- For accelerometers with a 10 Hz bandwidth, as compared to a wide bandwidth, there could be a difference of about 20 cm.
- There may also be some variation in the natural drift of vehicles, which can vary by about 40 cm over 100 m. This may affect the results by a few centimeters in the 20 m traveled during the test. (Changing the tires, keeping the same tire model, would yield yet a different result.)

Oxford also suggested that the test should be based upon ''spin velocity'' rather than ''spin displacement.'' The commenter reasoned that this approach would render timing less important, because spin velocity at 1.071 seconds is roughly constant, and it argued that measurements of ''spin velocity'' would be easier to repeat.

Technically speaking, as Oxford points out, the lateral displacement evaluated under the proposed ESC rule is not the ''lateral displacement of the vehicle's center of gravity,'' but an approximation of this displacement. In the context of the proposal, the location of the vehicle's center of gravity corresponds to the longitudinal center of gravity, measured when the vehicle is at rest on a flat, uniform surface.

The lateral displacement metric, as defined in the ESC NPRM, is based on the double integration of accurate lateral acceleration data. Lateral acceleration data are collected from an accelerometer, corrected for roll angle effects, and resolved to the vehicle's center of gravity using coordinate transformation equations. The use of accelerometers is commonplace in the vehicle testing community, and installation is simple and well understood. Although the use of GPS-based measurements for vehicle dynamics testing is increasing, achieving high dynamic accuracy requires differential post-processing (a process the agency has found to be time-consuming), a real-time differential service, or real-time kinematics base station correction of the data. Each of these options introduces significant cost and complexity to the testing effort. However, the system described by Oxford is approximately forty times more expensive than the calculation method prescribed by the final rule.

For the purposes of the ESC performance criteria, we believe use of a calculated lateral displacement metric provides a simple, reasonably accurate, and cost-effective way to evaluate vehicle responsiveness. Since the integration interval is short (recall that lateral displacement is assessed 1.07 seconds after initiation of the maneuver's steering inputs), integration errors are expected to be small. Recent improvements to the agency's data processing routines include refined signal offset and zeroing strategies that should minimize the confounding effects these factors may have on the test output, thereby ensuring repeatable results.

These NHTSA-developed routines used to calculate lateral displacement during data post-processing will be made publicly available, in order to ensure that vehicle manufacturers and ESC suppliers know exactly how the responsiveness of their vehicle's (or customer's vehicles) will be evaluated. If the sensors used to measure the

vehicle responses are of sufficient accuracy, and have been installed and configured correctly, use of the analysis routines provided by NHTSA are expected to minimize the potential for performance discrepancies among NHTSA and industry test efforts. The specifications of the accelerometers used by NHTSA are: (1) Bandwidth >300 Hz, (2) non-linearity <50 μg/g², (3) resolution ≤10 μg, and (4) output noise ≤7.0mV. An overview of all NHTSA instrumentation used during Sine with Dwell tests is provided in Table 5.

TABLE 5.—NHTSA SENSOR SPECIFICATIONS

| Data measured | Type | Range | Manufacturer | Accuracy | Model No. |
|---|---|---|---|---|---|
| Steering Wheel Angle | Angle Encoder | ±720 degrees | Automotive Testing, Inc. | ±0.10 degrees[1] | Integral with ATI Steering Machine. |
| Longitudinal, Lateral, and Vertical Acceleration. | Multi-Axis Inertial Sensing System. | Accelerometers: ±2g Angular Rate Sensors: ±100°/s. | BEI Technologies, Inc. Systron Donner Inertial Division. | Accelerometers:<50μg/g[2] [2]. Angular Rate Sensors: ≤0.05%. | MotionPak Multi-Axis Inertial Sensing System MP–1. |
| Left and Right Side Vehicle Ride Height. | Ultrasonic Distance Measuring System. | 4–40 inches | Massa Products Corp. | 0.25% of maximum distance. | M–5000/220 kHz. |
| Vehicle Speed | Radar Speed Sensor | 0.1–125 mph | B+S Software und Messtechnik. | 0.1 mph | DRS–6. |

[1] Combined resolution of the encoder and D/A converter.
[2] Non-linearity specifications.

(e) Maximum Steering Angle

For the Sine with Dwell test, the NPRM proposed to provide that ''[t]he steering amplitude of the final run in each series is the greater of 6.5A or 270 degrees.'' (*See* S7.9.4)

Toyota expressed concern that S7.9.4 may allow the steering angle to be too large for vehicles that have a large steering gear ratio. Toyota stated its belief that the upper limit of an average driver's steering velocity is approximately 1000°/sec; thus, the steering angle is 227° under a Sine with Dwell condition with a frequency of 0.7 Hz. Similarly, Toyota stated that the steering angle of 270° is equal to the steering velocity of 1188°/sec, a value that exceeds the average driver's steering velocity. Therefore, Toyota recommended revising S7.9.4 to state: ''The steering amplitude of the final run in each series is 270 degrees.''

NHTSA disagrees with Toyota's recommendation. Our own studies have shown that human drivers can sustain handwheel rates of up to 1189 degrees per second for 750 milliseconds. This steering rate corresponds to a steering angle magnitude of approximately 303 degrees.[64]

We concede that the method used to determine maximum Sine with Dwell steering angles can produce very large steering angles. Of the 62 vehicles used to develop the Sine with Dwell performance criteria, the vehicle requiring the most steering was a 2005 Ford F250. This vehicle required a maximum steering angle of 371 degrees (calculated by multiplying the average steering angle capable of producing a lateral acceleration of 0.3g in the Slowly Increasing Steer maneuver times a steering scalar of 6.5). Use of this steering wheel angle required an effective steering wheel rate of 1454 degrees per second, a magnitude well beyond the steering capability of a human driver.

Although we do not believe the maximum steering angle specified in S7.9.4 should be revised in the precise manner recommended by Toyota, we do believe revision of that specification is necessary. As such, we have updated the specification in S7.9.4 to read as follows:

S7.9.4 The steering amplitude of the final run in each series is the greater of 6.5A or 270 degrees, provided the calculated magnitude of 6.5A is less than or equal to 300 degrees. If any 0.5A increment, up to 6.5A, is greater than 300 degrees, the steering amplitude of the final run shall be 300 degrees.

(f) Vehicle Test Weight

Under S6.3.2, the NPRM proposed that the vehicle is to be loaded with the fuel tank filled to at least 75 percent of capacity, an total interior load of 168 kg (370 lbs) comprised of the test driver, approximately 59 kg (130 lbs) of test equipment (automated steering machine, data acquisition system and the power supply for the steering machine), and ballast as required by differences in the weight of test drivers and test equipment.

TRW Automotive commented that the proposed vehicle test conditions for vehicle weight leave only 240 pounds as the maximum driver test weight. The commenter suggested that the total interior load should be increased to 400 pounds, thereby permitting a maximum driver test weight of 270 pounds. According to TRW Automotive, this modification should not result in a substantive change to the intent of the regulation or test results, but it would provide greater flexibility in testing by accommodating a broader weight variance between drivers.

The Alliance/AIAM recommended modifying S6.3.2 to clarify the location where ballast (if required) is to be placed in the vehicle. The commenters recommended substituting the following language:

S6.3.2 *Test Weight.* The vehicle is loaded with the fuel tank filled to at least 75 percent of capacity, and total interior load of 168 kg (370 lbs.) comprised of the test driver, approximately 59 kg (130 lbs.) of test equipment (automated steering machine, data acquisition system and power supply for the steering machine), and ballast as required by differences in the weight of test drivers and test equipment. Where required, ballast shall be placed on the floor behind the passenger front seat or if necessary in the front passenger foot well area.

In regard to the TRW Automotive comment, given that the weight of a 95th percentile male is 225 pounds,[65]

[64] As background, the frequency of the sinusoidal curve used to command the Sine with Swell maneuver steering input is 0.7 Hz. Use of this frequency causes the time from the completion of the initial steering input (the first peak) to the completion of the steering reversal (the second peak) to take approximately 714 ms, regardless of the commanded steering angle magnitude. We have performed multiple studies using double-lane change maneuvers to evaluate the upper limit of human driver steering capability, and we have found the results listed above. *See* Forkenbrock, Garrick J. and Devin Elsasser, ''An Assessment of Human Driver Steering Capability,'' NHTSA Technical Report, DOT HS 809 875, October 2005. Available at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/NHTSA_forkenbrock_driversteeringcapabilityrpt.pdf.*

[65] Schneider, L.W., Robbins, D.H., Pflug, M.A., and Synder, R.G., ''Development of Anthropometrically Based Design Specifications for

we believe that the maximum allowable weight allocated for the test driver, as presently specified in the NPRM for FMVSS No. 126, is conservative and should not impose an unreasonable testing burden on parties performing ESC compliance tests. As such, in this final rule, we are retaining the total interior load of 168 kg (370 lbs) specified in S6.3.2.

In response to the Alliance/AIAM comment, we note that the standard does require ballast to be added to a test vehicle, if necessary, to account for varying weights of test drivers and test equipment. We agree with the Alliance/AIAM comment additional clarification of where the ballast shall be positioned is necessary. The agency has decided to provide further direction in the standard's test procedure to ensure required ballast is appropriately placed in the vehicle. We concur with the Alliance/AIAM recommendation, as it provides a reasonable way to evenly distribute the load of the driver, steering machine, and test equipment. Additionally, we also acknowledge the very abrupt vehicle motions imposed by the Sine with Dwell maneuver are capable of dislodging and/or relocating unsecured ballast while testing. So as to maximize driver safety, we have revised S6.3.2 to read:

S6.3.2 *Test Weight.* The vehicle is loaded with the fuel tank filled to at least 75 percent of capacity, and total interior load of 168 kg (370 lbs.) comprised of the test driver, approximately 59 kg (130 lbs.) of test equipment (automated steering machine, data acquisition system and power supply for the steering machine), and ballast as required by differences in the weight of test drivers and test equipment. Where required, ballast shall be placed on the floor behind the passenger front seat or if necessary in the front passenger foot well area. All ballast shall be secured in a way that prevents it from becoming dislodged during test conduct.

(g) Data Filtering

According to the Alliance/AIAM, NHTSA usually incorporates specifications for its data filtering method as part of its test report (presumably referring to the agency's laboratory test procedure). However, the commenters argued that given the potential for different filtering methods to significantly influence final results, the agency should specify its data filtering methods directly in FMVSS No. 126.

The Alliance/AIAM recommended the following filtering protocol for all channels (except steering wheel angle and steering wheel velocity): (a) Create a six-pole, low-pass Butterworth filter with a 6 Hz cut-off frequency, and (b) filter the data forwards and backwards so that no phase shift is induced. For the steering wheel angle channel, the commenters recommended using the same protocol, but with a 10 Hz cut-off frequency. For steering wheel velocity, the Alliance/AIAM recommended adoption of a specific calculation described in Appendix 1 of their comments.

Data filtering methods can have a significant impact on final test results used for determining vehicle compliance with FMVSS No. 126. The agency agrees with the Alliance/AIAM that the same filtering and processing protocols must be followed in order to ensure consistent and repeatable test results. Therefore, the agency has decided to add a new paragraph S7.11 to the test procedures section of the final rule's regulatory text in order to specify critical test filtering protocols and techniques to be used for test data processing, as described in greater detail above in Section IV.C.7(e), *Data Processing Issues.*

(h) Outriggers

Under the proposed test condition in S6 of the NPRM, paragraph S6.3.4 provides, ''Outriggers must be used for tests of Sport Utility Vehicles (SUVs), and they are permitted on other test vehicles if deemed necessary for driver safety.''

According to the Alliance/AIAM, although the use of outriggers may be appropriate, the final rule should explicitly clarify the vehicle classes that are to be equipped with outriggers under the standard and set forth the design specifications for those devices. The organizations suggested that requiring outriggers on sport utility vehicles and ''other test vehicles if deemed necessary for driver safety'' is too open-ended. The commenters argued that such clarification is necessary because outriggers can influence vehicle dynamics in the subject tests. Thus, the Alliance/AIAM recommended revising S6.3.4 to read as follows: ''Outriggers *meeting the specifications of [cite section]* must be used for tests of *trucks, multipurpose vehicles, and buses.''*

The agency agrees that the use of outriggers has the potential to influence vehicle dynamics during ESC testing. Therefore, in order to reduce test variability and increase the repeatability of test results, the agency is revising paragraph S6.3.4 in this final rule to specify that outriggers are to be used on all vehicles other than passenger cars. Furthermore, the agency has decided to include maximum weight and roll moment of inertia specifications for outriggers in paragraph S6.3.4, and we will also make available the detailed design specifications for the outriggers used by the agency as part of the NHTSA compliance test procedure for FMVSS No. 126.

(i) Ambient Temperature Range

Under the proposed test condition in S6 of the NPRM, paragraph S6.1.1 provides, ''The ambient temperature is between 0 °C (32 °F) and 40 °C (104 °F).''

In their comments, the Alliance/AIAM stated that their analysis has demonstrated test variability due to temperature. The Alliance/AIAM comments also suggested that certain high performance tires could enter their ''glass transition range'' [66] which could introduce further variability at near-freezing temperatures. For these reasons, the commenters expressed concern that the lower bound of the proposed ambient test range is too low. Accordingly, the Alliance/AIAM recommended increasing the lower bound of the temperature range to 50 degrees F. In addition to reducing test variability, the commenters stated that their proposed modification to the temperature portion of the test procedures would permit virtually year-round testing at certain facilities (*e.g.*, DRI Bakersfield), reduce burdens associated with confirming compliance at low temperatures, and avoid complications of snow and ice during testing.

A vehicle's ESC system is designed for and expected to address stability issues over a wide range of various environmental conditions. Testing conducted by Alliance/AIAM member companies indicates that lateral displacement for vehicles equipped with all-season tires varies with fluctuating ambient temperatures. According to the Alliance/AIAM, the data indicate that lateral displacement for test vehicles equipped with all-season tires increases as the ambient temperature decreased, suggesting that the displacement requirement could be met more easily at lower ambient

an Advanced Adult Anthropomorphic Dummy Family—Volume 1—Procedures, Summary Findings, and Appendices,'' The University of Michigan Transportation Research Institute Report UMTRI–83–53–1, December 1983, Table 2–5 at 20.

[66] We note that this is Alliance/AIAM's term, not NHTSA's. We believe they are referring to a rubber chemistry issue (*i.e.*, that all rubbery polymers turn into glassy solids at characteristic low temperatures), which vary depending on the polymer composition of the tires. The Alliance/AIAM seem to assert that because of their composition, for certain high performance tires, the ''glass transition range'' (*i.e.*, the temperature range between the glass temperature and the onset of fully rubber-like response) may include some of the lower bound of the proposed ambient test range.

temperatures. However, this same relationship was not manifest for test vehicles equipped with high performance tires. (Some high-performance tires are not designed for operation under freezing conditions, and the performance variability of these tires under cold ambient temperatures is unknown, because in our repeatability studies, we only test tires in the temperature ranges in which they are designed to operate.) The Alliance recommended minimizing potential test variability by reducing the specified test condition ambient temperature range. To minimize test variability the agency has decided to increase the lower bound of the temperature range for compliance testing to 45 degrees F. The agency believes that 7 °C (45 °F) is appropriate because it is low enough to increase the length of the testing season at multiple testing sites, and also represents the low end of the relevant temperature range for at least one brand of high performance tires of which the agency is aware.

(j) Brake Temperatures

In their comments, the Alliance/AIAM stated that several of their member companies assessed the affect of brake pad temperatures on ESC test results, particularly given the potential for drivers to use heavy braking between test runs. Included in their comments were charts based upon their research that purported to demonstrate variance in testing due to brake pad temperature would be an artifact of the test methodology, not a reflection of expected ESC performance in the real world. Therefore, in order to minimize non-representative test results, the Alliance/AIAM comments recommended that the standard's test procedures should specify a minimum of 90 seconds between test runs in order to allow sufficient time for cooling of the brake pads.

The test procedure specified in the NPRM did not address brake temperature issues that may arise from heavy braking between test runs. Because the agency agrees that excessive brake temperatures may have an effect on ESC test results, a minimum wait time between test runs has been incorporated into the test procedure to ensure brake temperatures are not excessive. We believe that 90 seconds, as proposed by the Alliance/AIAM, is a reasonable lower bound for the allowable time between runs. Note that the procedure specified in the NPRM does specify a maximum wait time of 5 minutes between test runs to ensure that the brakes and tires remain at operating temperatures, a feature we believe is important since compliance test procedures endeavor to simulate real world driving conditions. For these reasons, the allowable range of time between Sine with Dwell tests will be 90 seconds to 5 minutes.

(k) Wind Speed

Under the proposed test condition in S6 of the NPRM, paragraph S6.1.2 provides, ''The maximum wind speed is no greater than 10 m/s (22 mph).''

The Alliance/AIAM expressed concern that the proposed maximum wind speed for testing (10 m/s (22mph)) could impact the performance of certain vehicle configurations (*e.g.*, cube vans, 15-passenger vans, vehicles built in two or more stages). The commenters estimated that a cross wind at 22 mph could reduce lateral displacement at 1.07 s by 0.5 feet, compared to the same test conducted under calm conditions. Accordingly, the Alliance/AIAM recommended revising S6.1.2 to reduce the maximum allowable wind speed to 5 m/s (11 mph), a figure consistent with other regulatory requirements (*e.g.*, FMVSS No. 135, *Light Vehicle Brake Systems*) and ISO 7401.

The agency agrees that wind speed could have some impact on the lateral displacement for certain vehicle configurations, including large sport utility vehicles and vans. However, we also believe that reducing the maximum wind speed to 5 m/s (11 mph) can impose additional burdens on our test labs by restricting the environmental conditions under which testing can be conducted. With these considerations in mind, we have decided to modify S6.1.2 to reduce the wind speed requirement as recommended to 5 m/s (11 mph) for multipurpose passenger vehicles (including SUVs, vans, and trucks), but to keep the specified wind speed for passenger cars at 10 m/s (22 mph). This change will reduce test variability for those vehicles expected to be most effected by wind speed and to minimize any additional burdens on test laboratories.

We note that if we set the wind speed requirement at 5 m/s (11 mph) for all light vehicles, that would unduly limit the number of days on which NHTSA could perform compliance testing, and we further believe that wind speed up to 10 m/s (22 mph) would not have an appreciable impact on the testing of passenger cars due to their smaller side dimensions.

(l) Rounding of Steering Wheel Angle at 0.3 g

Under the proposed test procedure in S7 of the NPRM, paragraph S7.6.1 provides, ''From the Slowly Increasing Steer tests, the quantity ''A'' is determined. ''A'' is the steering wheel angle in degrees that produces a steady state lateral acceleration of 0.3 g for the test vehicle. Utilizing linear regression, A is calculated, to the nearest 0.1 degrees, from each of the six Slowly Increasing Steer tests. The absolute value of the six A's calculated is averaged and rounded to the nearest degree to produce the final quantity, A, used below.''

The Alliance/AIAM recommended against rounding the steering wheel angle measurement at 0.3 g to the nearest whole number, because such methodology potentially increases variability across test runs. As demonstrated in a table included in their submission, the commenters stated that such an approach could also increase steering wheel angle variability at a scalar of 5.0 (where the proposed responsiveness metric starts) by a factor of five. They also argued that rounding to that proposed level of precision (*i.e.*, to a whole number) does not simplify programming or control of the steering robot. Therefore, in order to eliminate this source of test variability, the Alliance/AIAM recommended rounding the steering wheel angle at 0.3 g to the nearest 0.1 degrees.

The agency agrees with the Alliance and AIAM recommendation to round the steering wheel angle at 0.3 g to the nearest 0.1 degree, and we have modified the final rule's regulatory text accordingly. Rounding to this level is not expected to complicate programming of the automated steering controller and will decrease the variability in the number of required test runs.

(m) Vehicle Speed Specification for the Slowly Increasing Steer Test

In their comments, the Alliance/AIAM questioned whether the proposal's failure to specify a vehicle speed for the slowly-increasing-steer test was an oversight. The commenters recommended adopting specifications for a test speed of 80 ± 1 km/h, which is consistent with the speed for the Sine with Dwell test.

We agree that a speed tolerance should be specified for the Slowly Increasing Steer test, and we have determined that it should be the same as the speed tolerance specified for the Sine with Dwell test. However, we note that in this final rule, the proposed Sine with Dwell test speed tolerance has been revised to better reflect the manner in which testing is performed; as revised, the speed tolerance is 80 ± 2 km/h (50 ±1 mph). This speed tolerance

will also be applicable to the Slowly Increasing Steer maneuver.

(n) Alternative Test Procedures

Public Citizen stated that in the NPRM, the agency noted that there is a trade-off between lateral stability and intervention magnitude, but the commenter challenged the agency's determination as to where the appropriate balance should be set. Public Citizen stated that the agency should provide an assessment of other available alternative test procedures and the agency's rationale for not adopting those procedures. The commenter further argued that the test procedures which the agency did propose may be inadequate, particularly if errors in measurement would allow vehicles to pass the performance test.

We believe an appropriate balance between lateral stability and intervention magnitude is one in which a light vehicle is in compliance with the evaluation criteria of FMVSS No. 126, both in terms of lateral stability and responsiveness. Development of these criteria was the result of hundreds of hours of testing and data analysis. We are confident these criteria provide an extremely effective way of objectively assessing whether the lateral stability of ESC-equipped vehicle is adequate.

We believe the responsiveness criteria proposed for use in FMVSS 126, that a vehicle must achieve at least 6 feet (5 feet for vehicles with a GVWR of greater than 3500 kilograms) of lateral displacement when the Sine with Dwell maneuver is performed with normalized steering angles (normalized steering wheel angles account for differences in steering ratios between vehicles) greater than 5.0, adequately safeguards against implementation of overly aggressive ESC systems, even those specifically designed to mitigate on road untripped rollover (*i.e.*, systems that may consider stability more important than path following capability). Achieving acceptable lateral stability is very important, but should not be accomplished by grossly diminishing a driver's crash avoidance capability.

Intervention intrusiveness can refer to how the vehicle manufacturer and its ESC vendor ''tune'' an ESC system for a particular make/model, specifically how apparent the intervention is to the driver. We do not believe it is appropriate to dictate this form of intervention magnitude, as it can be an extremely subjective specification. As long as a vehicle's ESC (1) Satisfies our hardware and software definitions and (2) allows the vehicle to comply with our lateral stability and responsiveness performance criteria, we believe intervention intrusiveness should be a tuning characteristic best specified by the vehicle/ESC manufacturers.

In response to the Public Citizen statement regarding maneuver selection, we evaluated twelve test maneuvers before ultimately selecting the Sine with Dwell maneuver to assess ESC performance. As explained below, this evaluation was performed in two stages, an initial reduction from twelve maneuvers to four, then from four to one.

The first stage began with identification of three important attributes: (1) High maneuver severity (''maneuver severity''); (2) capability to produce highly repeatable and reproducible results using inputs relevant to real-world driving scenarios (''face validity''); and (3) ability to effectively evaluate both lateral stability and responsiveness (''performability''). To quantify the extent to which each maneuver possessed these attributes, adjectival ratings ranging from ''Excellent'' to ''Fair'' were assigned to each of the twelve maneuvers, for each of the three maneuver evaluation criteria. Of the twelve test maneuvers, only four received ''Excellent'' ratings [67] for each of the maneuver evaluation criteria—the Increasing Amplitude Sine (0.7 Hz), Sine with Dwell (0.7 Hz), Yaw Acceleration Steering Reversal (YASR; 500 deg/sec), and Yaw Acceleration Steering Reversal with Pause (YASR with Pause; 500 deg/sec steering rate).

Stage two of the maneuver reduction process used data from 24 vehicles (a sampling of sports cars, sedans, minivans, small and large pickup trucks, and sport utility vehicles intended to represent a majority of the vehicles presently sold in the United States) to compare the maneuver severity, face validity, and performability of the four maneuvers selected in the first stage. The ability of the four maneuvers to satisfy these three evaluation criteria were compared and rank ordered.

Of the four candidate maneuvers, we concluded the Sine with Dwell and YASR with Pause were the top performers in terms of evaluating the lateral stability component of ESC functionality. However, due to the fact that the Sine with Dwell maneuver required smaller steering angles to produce spinouts for five of the ten vehicles evaluated with left-right steering, and for two of the ten vehicles with right-left steering (with the remaining thirteen tests using the same steering angles), we assigned the Sine with Dwell maneuver a higher maneuver severity ranking than that assigned to the YASR with Pause maneuver.

Generally speaking, the Increasing Amplitude Sine and YASR maneuvers required the most steering to produce spinouts, regardless of direction of steer. However, the Increasing Amplitude Sine maneuver also produced the lowest normalized second yaw rate peak magnitudes, implying the maneuver was the least severe for most of the 24 test vehicles used for maneuver comparison. For this reason, we assigned the worst severity ranking to the Increasing Amplitude Sine maneuver.

Each of the four candidate maneuvers possessed inherently high face validity since they were each comprised of steering inputs similar to those capable of being produced by a human driver in an emergency obstacle avoidance maneuver. However, of the four maneuvers, we believed the Increasing Amplitude Sine maneuver possessed the best face validity. Conceptually, the steering profile of this maneuver was the most similar to that expected to be used by real drivers,[68] and even with steering wheel angles as large as 300 degrees, the maneuver's maximum effective steering rate was a very reasonable 650 deg/sec. For these reasons, the Increasing Amplitude Sine maneuver received the top face validity rating.

The two YASR maneuvers received the same face validity ratings, just lower than that assigned to the Increasing Amplitude Sine. The YASR steering profiles were comprised of very reasonable 500 deg/sec steering rates; however, their sharply defined, trapezoidal shapes reduce their similarity to inputs actually used by drivers in real world driving situations. The steering profile of the Sine with Dwell was deemed very reasonable; however, the maneuver can require steering rates very near what we believe is the maximum capability of a human driver.

[67] The adjectival ratings used to rate the test maneuvers were ''Excellent,'' ''Good,'' and ''Fair,'' with ''Excellent'' being the best and ''Fair'' being the worst. We considered an ''Excellent'' maneuver as one capable of adequately demonstrating whether a vehicle was, or was not, equipped with an ESC system that satisfied a preliminary version of our minimum performance criteria. Conversely, a maneuver assigned a ''Fair'' rating was unable to adequately demonstrate whether vehicles evaluated by NHTSA were, or were not, equipped with ESC systems capable of satisfying the preliminary minimum performance criteria.

[68] In an obstacle avoidance scenario, it is clearly conceivable that the second steering input may be larger than the first input. If the first steering input induces overshoot, the driver's reversal will need to be equal to the first steering input plus enough steering to combat the yaw overshoot.

The performability of the Sine with Dwell and the Increasing Amplitude Sine maneuvers were deemed to be excellent. These maneuvers are very easy to program into the steering machine, and their lack of rate or acceleration feedback loops simplifies the instrumentation required to perform the tests. Conversely, the YASR maneuvers require the use of specialized equipment (an angular accelerometer), and these maneuvers required an acceleration-based feedback loop that was sensitive to the accelerometer's signal-to-noise ratio near peak yaw rate. Testing demonstrated that large steering angles can introduce dwell time variability capable of adversely reducing maneuver severity and test outcome.

After considering the totality of the test result from our evaluation of the candidate maneuvers and for the reasons stated above, the agency concluded that the Sine with Dwell maneuver offers the best combination of maneuver severity, face validity, and performability. Additional details of the maneuver selection process are available in an Enhanced Safety of Vehicles (ESV) technical paper [69] and an NHTSA technical report.[70]

Turning to the statement in Public Citizen's comments regarding the implication of measurement errors, the commenter stated that ''* * * the error in measurements would allow vehicles to pass that did not even meet the * * * standard of the proposal.'' This comment is in response to comments made by Brendan Watts from Oxford Technologies, a company that sells highly accurate (and very expensive) instrumentation.[71] Many of the concerns expressed by Mr. Watts (stressing the importance of using accurate accelerometers and sound data processing techniques) are not specifically applicable to the manner in which we (NHTSA) will be performing our ESC compliance tests, in that such concerns have already been addressed by the agency. For example, the accelerometers that will be used in ESC compliance tests are more accurate than those Mr. Watts indicated may compromise test accuracy. We appreciate the data processing concerns expressed by Mr. Watts (*e.g.*, correcting lateral acceleration for the effects of roll angle, or addressing offset from the vehicle's center of gravity), but again, our post-processing routines already contain algorithms to resolve such concerns.

We note that all test track evaluations inherently contain some degree of output variability, regardless of what aspect of vehicle performance they are being used to evaluate. In the context of ESC compliance, we concede this variability could result in a marginally non-compliant vehicle passing the proposed test, but it is important to recognize these situations would only affect a very small population of vehicles, and that that effect of instrumentation and/or calculation errors is likewise believed to be very small. Since the performance of most contemporary vehicles resides far enough away from the proposed compliance thresholds, we believe it is extremely unlikely that measurement complications will be solely responsible for having the performance of a non-compliant vehicle be deemed acceptable.

(o) Representativeness of Real World Conditions

Mr. Kiefer questioned the adequacy of the agency's proposed ESC test procedures. Specifically, the commenter questioned how many tests are necessary to ensure that the system is robust, and how many different configurations of tires, loading, and trailering are needed to be representative of real world driving.

Mr. Cheah also questioned whether it would be feasible for the ESC test procedures' controlled conditions to adequately represent real world conditions. He argued that even though an ESC system may increase safety under certain conditions, in other cases, it may add ''unpredictable and unusual characteristics to the vehicle.''

NHTSA has reviewed many crash data studies quantifying real world ESC effectiveness.[72] Regardless of the origin of the data used for these studies (*i.e.*, whether from the United States, Germany, Japan, France, Sweden, etc.), all reported or estimated that ESC systems provide substantial benefits in ''loss of control'' situations (*see* Section II.D). These studies reported that ESC is expected to be particularly effective in situations involving excessive oversteer, such as ''fishtailing'' or ''spinout'' which may result from sudden collision avoidance maneuvers (*e.g.*, lane changes or off-road recovery maneuvers).

We note that the Sine with Dwell maneuver is specifically designed to excite an oversteer response from the vehicle being evaluated. While this maneuver has been optimized for the test track (because objectivity, repeatability, and reproducibility are necessary elements of a regulatory compliance test), it is important to recognize that multiple studies have indicated that the steering angles and rates associated with the Sine with Dwell maneuver are within the capabilities of actual drivers, not just highly trained professional test drivers.

NHTSA does not know of any ''unpredictable and unusual characteristics'' imparted by any ESC system on the vehicle in which it is installed. ESC interventions occur in extreme driving situations where the driver risks losing control of the vehicle, not during ''normal'' day-to-day driving comprised of relatively small, slow, and deliberate steering inputs. In these extreme situations, the driver must still operate the vehicle by conventional means (*i.e.*, use of steering and/or brake inputs are still required to direct the vehicle where the driver wants it to go); however, the mitigation strategies used by ESC to suppress excessive oversteer and understeer help improve the driver's ability to successfully retain control of the vehicle under a broad range of operating conditions.

The load configuration used during the conduct of our ESC performance tests is known as the ''nominal'' load configuration, consisting of a driver and test equipment. This configuration approximates a driver and one front seat occupant. We believe this configuration is highly representative of how the majority of vehicles driven on our nation's roadways are loaded. Our analyses, based on results from a database [73] comprised of 293,000 single-vehicle crashes, indicate that the average number of passenger car occupants involved in a single-vehicle crash was 1.48 occupants per vehicle. Results for pickups, sport utility vehicles, and vans were similar (1.35,

[69] Forkenbrock, Garrick J., Elsasser, Devin, O'Harra, Bryan C., ''NHTSA's Light Vehicle Handling and ESC Effectiveness Research Program,'' ESV Paper Number 05–0221, June 2005. (Docket No. NHTSA–2006–25801–5)

[70] Forkenbrock, Garrick J., Elsasser, Devin, O'Harra, Bryan C., Jones, Robert E., ''Development of Electronic Stability Control (ESC) Performance Criteria,'' NHTSA Technical Report, DOT HS 809 974, September 2006. Available at *http://www-nrd.nhtsa.dot.gov/pdf/nrd-01/esv/esv19/05-0221-O.pdf.*

[71] The comments made by Mr. Watts are specifically addressed in Section IV.C.11(d) of this document.

[72] *See* 71 FR 54712, 54718 (Sept. 18, 2006) footnote 11.

[73] Data were analyzed for the development of the rollover NCAP star ratings criteria. It is data for six States: Florida (1994–2001), Maryland (1994–2000), Missouri (1994–2000), North Carolina (1994–1999), Pennsylvania (1994–1997), and Utah (1994–2000). Only single-vehicle crashes for 100 make-models were included. Please consult the Rollover NCAP portion of the NHTSA Web site for further information (*http:///www.nhtsa.dot.gov*).

1.54, and 1.81 occupants per vehicle, respectively).

We believe it is important for an objective test procedure to be applicable to all light vehicles (*i.e.*, vehicles with a GVWR of 10,000 pounds or less). The use of multiple load configurations was considered, but there are an infinite number of ways drivers can potentially load their vehicles, and not all vehicles can be subjected to the same load configurations.

Although we do believe it is important to understand how vehicle loading can influence ESC effectiveness and presently have research programs designed to objectively quantify those effects, we believe requiring ESC on all light vehicles will save thousands of lives per year. Accordingly, we do not believe it is appropriate to delay the present mandate for ESC, and to thereby fail to maximize the benefits of this requirement, pending the outcome of this additional research. In sum, we believe that the available data strongly support our decision to mandate ESC installation on all light vehicles at this time.

12. Lead Time and Phase-in

In preparing its ESC proposal, the agency carefully considered the lead time necessary for expedient yet practicable incorporation of this important safety device. With minor exceptions discussed below, NHTSA proposed in the NPRM to require all light vehicles covered by this standard to be equipped with a FMVSS No. 126-compliant ESC system by September 1, 2011 (*see* 8.4). However, the agency proposed to extend by one year the time for compliance by multi-stage manufacturers and alterers (*i.e.*, until September 1, 2012) (*see* S8.8).

In terms of the phase-in for ESC, the agency proposed that compliance would commence on September 1, 2008, which would mark the start of a three-year phase-in period (*see* S8.1 to S8.4). Subject to the special provisions discussed below, the agency proposed the following phase-in schedule for FMVSS No. 126: 30 percent of a vehicle manufacturer's light vehicles manufactured during the period from September 1, 2008 to August 31, 2009 would be required to comply with the standard; 60 percent of those manufactured during the period from September 1, 2009 to August 31, 2010; 90 percent of those manufactured during the period from September 1, 2010 to August 31, 2011, and all light vehicles thereafter.

The agency proposed to exclude multi-stage manufacturers and alterers from the requirements of the phase-in and instead require full implementation at the special mandatory compliance date applicable to those manufacturers (*i.e.*, September 1, 2012) (*see* S8.8). The NPRM also proposed to exclude small volume manufacturers (*i.e.*, manufacturers producing less than 5,000 vehicles for sale in the U.S. market in one year) from the phase-in, instead requiring such manufacturers to fully comply with the standard on September 1, 2011 (*see* S8.7).

Under our proposal, vehicle manufacturers would be permitted to earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, which are manufactured between the effective date of the final rule and the conclusion of the phase-in period (*see* S8.5). In the NPRM, we noted that carry-forward credits would not be permitted to be used to defer the mandatory compliance date for all covered vehicles.

(a) Lead Time for ESC Telltale(s)

Vehicle manufacturers and their representatives generally did not object to the lead time provided for meeting the proposed ESC performance requirements, although they did request additional lead time to meet the control and telltale requirements. For example, the Alliance/AIAM comments argued that there is currently a lack of uniformity among ESC systems in terms of their labeling and telltales, such that most existing systems would not meet those requirements. In fact, the Alliance and AIAM stated that none of their members' ESC systems would fully meet the proposed requirements. As a result, they suggested that these ESC systems may not be fully compliant with the standard and, therefore, may be ineligible for carry-forward credits under the standard.

These commenters also argued that current ESC systems have a variety of special-purpose operating modes which may require specific context-related labeling. According to the commenters, these modes are not fully ''off'' and provide varying degrees of ESC intervention, but they will generally not comply with the proposal's ''full on'' performance requirements. The Alliance/AIAM stated that in some cases, an ESC system may have more than one of these special-purpose modes, so they requested that manufacturers be given flexibility in terms of how relevant information is presented to vehicle operators.

Accordingly, the Alliance/AIAM requested that the effective date for the ESC control and telltale requirements proposed to be contained in FMVSS Nos. 101 and 126 be postponed until the end of the phase-in (*i.e.*, September 1, 2011), with early compliance permitted, as was done in the agency's TPMS rulemaking. The commenters also requested that ESC-equipped vehicles produced prior to that date which meet all other requirements of the standard be permitted to earn carry-forward credits under FMVSS No. 126 and the ESC phase-in reporting provisions of 49 CFR Part 585, because many manufacturers will need to use such carry-forward credits to meet the agency's aggressive phase-in schedule.

Honda stated that although it expects its ESC systems to already meet the proposed performance requirements, additional lead time is necessary to meet the proposed control and telltale requirements for ESC. As a result of the proposal, the commenter stated that every Honda and Acura vehicle would require a redesign of its instrument panel to accommodate the proposed telltale symbol and sizing (*i.e.*, a vertical layout, which differs from the company's current horizontal layout). According to Honda, the necessary tooling changes to the instrument panel assemblies and required reprogramming, testing, and validation to the electronic control unit would involve significant cost; Honda estimated these costs to range from $17,000 to $170,000 per model, with a total expenditure of over $1 million.

Honda stated that in its proposal, the agency stated its expectation that approximately 98 percent of the ESC systems in current vehicles would already comply with the proposed requirements, and the remaining two percent would only require slight tuning. However, the commenter argued that the agency must have been focusing on the ESC performance requirements, because very few vehicles currently in production meet the proposed control and telltale requirements. Looking beyond the issue of cost, Honda stated that it would be difficult to make these changes in line with the proposed phase-in schedule.

According to Honda, its request for a delay in implementation of the ESC control and telltale requirements is consistent with the approach adopted by NHTSA in its rulemaking establishing FMVSS No. 138, *Tire Pressure Monitoring Systems* (TPMS). Honda stated that this approach would allow the public to receive the immediate benefit of ESC systems, while providing the industry adequate time to ensure compliance with the entire regulation. Therefore, Honda requested lead time until the end of the phase-in period (*i.e.*, September 1, 2011) to meet the proposed control and telltale

requirements. Alternatively, the company requested that the entire phase-in be delayed, beginning three years after publication of the final rule to establish FMVSS No. 126, in order to provide adequate lead time.

Nissan stated that depending upon the design of the vehicle and the extent of the changes required, it would require an additional ten months to three years of lead time in order to meet the control and telltale requirements in the ESC proposal. Thus, Nissan also requested that the agency delay the effective date of the ESC control and telltale requirements until the end of the phase-in (*i.e.*, September 1, 2011) (similar comment provided by the Toyota). Nissan stated that without an extension of the lead time for the control and telltale requirements, its current systems would not be eligible for the carry-forward credits upon which the company plans to rely in order to meet the aggressive phase-in schedule for ESC. The commenter further noted that the control and telltale requirements would not impact the dynamic performance of the ESC system and that the company has not received any reports of consumer confusion associated with its current ESC telltales and symbols.

Porsche also requested additional lead time to meet the proposed control and telltale requirements for ESC, citing the company's longer-than-average product life cycles which present unique challenges in terms of meeting standard phase-in schedules. The commenter stated that the telltale systems for its vehicles have already been developed, and it had planned on keeping those systems unchanged until the next product cycle (mid-2012 for some models). Porsche stated that the proposed ESC off telltale requirements would substantially disrupt this existing telltale production strategy. Accordingly, Porsche requested either an extension for compliance with the ESC-related control and display requirements for all manufacturers until September 1, 2012, or alternatively, it requested an extension from those requirements until that date for any manufacturer which would be able to equip 100 percent of their fleet with vehicles meeting the ESC performance requirements by September 1, 2008 (a schedule Porsche expects to meet).

According to the VDA, indicator symbols and indicator algorithms for current ESC systems vary considerably across different vehicle manufacturers. The commenter stated that implementing the proposed telltale requirements within the proposed phase-in schedule would involve considerable effort, particularly in light of the long lead times associated with changes to vehicle cockpit designs. Therefore, the VDA recommended extending the lead time provided for implementing the ESC telltale requirements and to accord vehicle manufacturers flexibility in terms of ESC telltale designs for special modes (*e.g.*, ones for deep snow, snow chains).

In order to provide the public as rapidly as possible with what are expected to be the significant safety benefits of ESC systems, NHTSA has decided to require all light vehicles covered by this standard to be equipped with a FMVSS No. 126-compliant ESC system by September 1, 2011 (with certain exceptions discussed below). Consistent with our proposal, September 1, 2008 marks the start of a three-year phase-in period for FMVSS No. 126.

After consideration of the numerous manufacturer comments on this issue, we have decided to defer the standard's requirements related to the ESC telltales and controls until the end of the phase-in (*i.e.*, September 1, 2011 for most manufacturers; September 1, 2012 for final-stage manufacturers and alterers); however, at that point, all covered vehicles must meet all relevant requirements of the standard (*i.e.*, no additional phase-in for the control and telltale requirements). This approach is consistent with vehicle manufacturers' request for additional lead time until the end of the phase-in to bring their ESC systems into full compliance (including the control and telltale requirements). Manufacturers are encouraged to voluntarily install compliant ESC controls and displays prior to the mandatory compliance date. Our rationale for this change from our proposal is as follows.

We now understand from the public comments that vehicle manufacturers currently employ a variety of approaches for ESC controls and telltales, many of which would not meet the requirements of the agency's proposal, and that standardization of ESC controls and telltales will involve substantial design and production changes. We further understand from the comments that manufacturers' inability to meet the proposed control and display requirements would prevent them from earning the carry-forward credits, even though these ESC systems might otherwise meet the performance requirements of the standard. Vehicle manufacturers' inability to earn carry-forward credits would likely jeopardize their ability to meet the standard's phase-in schedule.

We agree that it is the performance of the ESC systems themselves that impart safety benefits under the standard, and our analysis demonstrates that the safety benefits associated with early introduction of ESC systems, even without standardized controls and displays, far outweigh the benefits of delaying the standard until all systems can fully meet the control and display requirements (*see* FRIA's lead time/phase-in discussion). We do not believe that implementation of the entire standard should be delayed until technical changes related to the ESC controls and telltales can be fully resolved, because they would deny the public the safety benefits of ESC systems in the meantime. Accordingly, we believe that it is preferable to move rapidly to implement the standard, but to delay the compliance date only for the ESC control and telltale requirements.

On a related matter, commenters pointed out that vehicle manufacturers may earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, which are manufactured between the effective date of the final rule and the conclusion of the phase-in period. In clarification, we would note that vehicles that meet the performance requirements of FMVSS No. 126, but do not meet the control and telltale requirements of the standard prior to the end of the phase-in are eligible for carry-forward credits and may be counted as part of the manufacturer's required production under the phase-in.

In response to the comments of the Alliance/AIAM and the VDA that the agency should accord vehicle manufacturers flexibility in terms of ESC telltale designs for special modes, we acknowledge that resolution of this issue is another factor supporting our decision to provide additional lead time for manufacturers to meet the ESC control and telltale requirements. However, in terms of the substantive issue of what message should be provided by those controls and telltale, this is a substantive matter which we are addressing under the public comment response for ESC telltales (*see* Section IV.C.9 of this document).

(b) Phase-in Schedule

Advocates for Highway and Auto Safety argued that in light of vehicle manufacturers' current high level of installation of advanced ESC systems, the agency should accelerate is proposed timetable (similar comment by IIHS). Advocates argued that this acceleration should occur in terms of both the interim percentages within the

phase-in and the date for mandatory full compliance in order to bring this important safety feature to the whole market more quickly. The Advocates suggested that full implementation should occur by September 1, 2010 (*i.e.*, one year earlier than proposed in the NPRM) (similar comment by Consumers Union, Mr. Petkun). Specifically, Advocates recommended adoption of the following implementation schedule for installation of ESC in the final rule:

- 40 percent of model year (MY) 2008 light vehicles by September 1, 2008.
- 70 percent of MY 2009 light vehicles by September 1, 2009.
- 100 percent of MY 2010 light vehicles by September 1, 2010.
- 100 percent of light vehicles produced by multi-stage manufacturers, alterers, and small volume manufacturers by September 1, 2011.

Advocates argued that its recommended phase-in schedule would be both realistic and achievable, because it would be consistent with the projected ESC installation rates predicted by vehicle manufacturers and the agency. The commenter also stated that given that the proposal would effectively permit compliance by currently existing ESC systems, a protracted phase-in schedule is unnecessary.

Consumers Union stated that it would like to see the phase-in be vehicle-type-specific. It recommended that ESC first be required on all SUVs, followed by small cars (which the commenter stated tend to be driven by younger, less experienced drivers), and then on family and upscale sedans (which the commenter stated tend to be driven by older, more experienced drivers).

Public Citizen argued that because ESC components are already well-defined and familiar to manufacturers, extensive research and development for these systems is not required, and that given the important life-saving potential of ESC technology, the agency should not provide a phase-in schedule slower than what the industry is already planning (citing statements by Ford, General Motors, and DaimlerChrysler). In addition, Public Citizen also suggested that the agency should consider adopting a more aggressive phase-in schedule for ESC on new light trucks and SUVs, because of these vehicles' higher propensity to roll over.

In order to provide the public as rapidly as possible with what are expected to be the significant safety benefits of ESC systems, NHTSA has decided to require all light vehicles covered by this standard to be equipped with a FMVSS No. 126-compliant ESC system by September 1, 2011 (with certain exceptions discussed below), with September 1, 2008 marking the start of a three-year phase-in. This implementation date for full, mandatory compliance is the same as that proposed in the NPRM. The agency continues to believe that this schedule for full implementation of the safety standard for ESC is appropriate, in order to provide manufacturers adequate lead time to make necessary production changes. Even though vehicle manufacturers are currently introducing ESC systems into an increasing percentage of their new vehicle fleets, that does not mean that these complex systems can be incorporated into vehicles without significant developmental efforts to tune them to and to incorporate them into a specific vehicle design.

However, in response to public comments and upon further review of the production plans voluntarily submitted by vehicle manufacturers, we have determined that it would be practicable to increase the percentage of new light vehicles that must comply with Standard No. 126 under the phase-in, thereby accelerating the benefits expected to be provided by ESC systems. Because ESC is so cost-effective and has such high benefits in terms of potential fatalities and injuries that may be prevented, the agency agrees that it is important to require ESC installation in light vehicles as quickly as possible. Accordingly, under this final rule, we are requiring the following phase-in schedule for FMVSS No. 126: 55 percent of a vehicle manufacturer's light vehicles manufactured during the period from September 1, 2008 to August 31, 2009 would be required to comply with the standard; 75 percent of those manufactured during the period from September 1, 2009 to August 31, 2010; 95 percent of those manufactured during the period from September 1, 2010 to August 31, 2011, and all light vehicles thereafter. (This compares to the NPRM's proposal for a 30/60/90/all phase-in schedule over the same time periods.)

In order to ensure the financial and technological practicability of the final rule (in keeping with our statutory mandate), while at the same time facilitating ESC installation in the light vehicle fleet as expeditiously as possible, the agency analyzed the product plans submitted by six vehicle manufacturers, whose combined production accounts for approximately 87 percent of the new light vehicle fleet. As explained in Chapter VII of the FRIA, we examined three different potential phase-in schedules to find the right balance among these competing concerns. Based upon this product plan information and the desire to provide manufacturers with flexibility by having a carry forward provision, we have chosen the most aggressive phase-in alternative that we believe is reasonable (*i.e.*, 55/75/95%).

Two factors were controlling in making the decision as to which alternative to choose: (1) The ability of manufacturers to change vehicles from being equipped with optional ESC to standard ESC for MY 2010 and MY 2011; and (2) Not forcing any manufacturer to install ESC in any make/model for which it was not planned to be at least an option. The agency did not believe there was enough lead time to redesign such a make/model to include ESC by MY 2009. While there may be enough time to redesign a make/model to include ESC by MY 2010, given the carry forward provisions this was not necessary for any of the six manufacturers for MY 2010. The second consideration became a factor once again in MY 2011, in not going beyond 95 percent (thereby obviating the costly need to redesign and develop tooling for a few vehicle lines which will not be produced in MY 2012).

In general, we anticipate that vehicle manufacturers will be able to meet the requirements of the standard by installing ESC system designs currently in production (*i.e.*, ones available in MY 2006), and most vehicle lines would likely experience some level of redesign over the next three to four years, thereby providing an opportunity to incorporate an ESC system during the course of the manufacturer's normal production cycle. Except for possibly some low-production-volume vehicles with infrequent design changes (addressed below), NHTSA believes that most other vehicles can reasonably be equipped with ESC within three to four model years. Furthermore, we do not believe that the final rule's phase-in should pose ESC supply problems; public comments from vehicle manufacturers and ESC suppliers did not raise any such supply concerns, and our analysis of vehicle manufacturers' production plans suggest that the selected phase-in schedule will result in an installation rate increase of only a few percentage points in any year of the phase-in. Overall, we have determined that the final rule's phase-in schedule may be accomplished without disruptive changes in manufacturer and supplier production processes.

As noted immediately above, we have decided to defer the standard's requirements related to the ESC telltales and controls until the end of the phase-

in (*i.e.*, September 1, 2011 for most manufacturers; September 1, 2012 for final-stage manufacturers and alterers.

We have modified the final rule's phase-in reporting requirements for ESC systems (contained in Subpart I of 49 CFR Part 585) in a manner consistent with the phase-in schedule discussed above.

We have decided not to adopt the suggestion by Consumers Union that the agency should specify phase-in requirements for ESC by vehicle type. We note that vehicle manufacturers have already been moving aggressively to include ESC systems in high-center-of-gravity vehicles (*e.g.*, SUVs). Furthermore, we are concerned that such action would amount to unwarranted agency intervention into the details of manufacturers' production plans. It is unclear how such intervention might impact implementation of the standard and installation of ESC systems overall. Given these concerns, we have decided not to change our traditional approach of affording vehicle manufacturers flexibility in terms of how (*i.e.*, with which models) they will meet a safety standard's phase-in requirements.

13. Impacts on the Aftermarket

The Specialty Equipment Market Association (SEMA), an aftermarket trade association representing the specialty automotive industry, expressed support for the ESC rulemaking as an important advance for automotive safety. However, the organization expressed concern regarding the interaction of ESC systems with products manufactured by its members (many of which are small businesses), arguing that current ESC systems seem to be largely vehicle-specific. According to SEMA, many of their members' products (*e.g.*, wheels, tires, suspension systems), installed either for repair or replacement of existing equipment, also increase motor vehicle safety, so it is imperative that these products remain available to consumers and that they operate in unison with the ESC system.

SEMA explained that as a new and evolving technology, ESC systems could potentially be impacted by the installation of a variety of other automotive products (*e.g.*'' wheels, tires, suspension systems, drive gear sets, brake parts/systems) during the life of the vehicle. The commenter cited the potential for such modifications to deactivate the ESC system, to cause its premature failure, or to reduce its effectiveness. However, SEMA stated its impression that neither vehicle manufacturers, ESC suppliers, nor the agency have answers to questions regarding ESC interaction with other equipment and systems, and SEMA is not aware of any available data on this topic or related testing. It argued that, as drafted, the agency's proposal fails to contemplate the full range of downstream consequences associated with the required ESC installation. According to SEMA, the dearth of knowledge about how ESC systems will operate in conjunction with common vehicle modifications is a fundamental flaw in the agency's rulemaking.

In terms of its impact on automotive aftermarket manufacturers and the vehicle service industry, SEMA stated that there is a significant difference between voluntary installation of the ESC system and its mandatory installation under a Federal safety standard. Specifically, SEMA referred to the statutory prohibitions on manufacturing/selling/importing noncomplying motor vehicles and equipment (49 U.S.C. 30112) and on making safety devices and elements inoperative (49 U.S.C. 30122). Violations of these provisions can result in substantial civil penalties. Accordingly, the commenter cautioned the agency to fully investigate how the ESC rule will impact the aftermarket industry prior to establishing a mandatory safety standard.

SEMA's recommended solution is to either: (1) Delay issuance of a final rule until the interaction between ESC systems and aftermarket components is better understood, or (2) require ESC systems to be capable of adapting to subsequent vehicle modifications or otherwise be capable of being modified by installers to accommodate aftermarket equipment. According to SEMA, the agency should not feel rushed to issue a final rule, given that vehicle manufacturers are already ahead of NHTSA's proposed phase-in schedule and that the statute only requires issuance of a final rule by April 1, 2009.

In response, NHTSA emphasizes that we are issuing a final rule on ESC systems before the statutory deadline (*i.e.*, April 2009) because of the tremendous safety benefits that we believe an ESC standard can achieve. If, as anticipated, an ESC standard can save thousands of lives each year, clearly we should establish that standard as soon as possible. As noted above, ESC systems were installed on approximately 29 percent of MY 2006 light vehicles, and that percentage was expected to rise to 71 percent by MY 2011, consistent with manufacturers' production plans. However, given ESC's estimated high effectiveness rate in preventing single-vehicle crashes (34 percent for passenger cars and 59 percent for SUVs) and rollovers (71 percent for passenger cars and 84 percent for SUVs), the agency decided that it was imperative to mandate ESC to ensure that *all* drivers receive the benefit of this important safety device (*i.e.*, to close the gap between manufacturers' planned installation rates and the requirement for ESC systems to be standard equipment on all light vehicles). For every year that the final rule is delayed (assuming consistent lead time and the same phase-in), we estimate that 1,547–2,534 lives would be lost and 46,896–65,801 injuries would occur over the lifetime of that model year fleet due to lower ESC installation rates (*see* FRIA Executive Summary, E–2 .[74]) We believe that result is unacceptable. Thus, NHTSA will not delay the issuance of this final rule simply because the statute allows us more time.

Furthermore, NHTSA disagrees that the final rule should be delayed because it does not analyze all possible ''downstream consequences'' or impacts on the aftermarket community to SEMA's satisfaction. As discussed in Section IV.C.14 below, even though NHTSA has no legal obligation to analyze the impacts of a rulemaking on entities not directly regulated by the rule, we are nevertheless concerned about the impact our rules have on all affected parties. Accordingly, we have considered the effects that the ESC final rule might have on aftermarket motor vehicle equipment manufacturers and the motor vehicle service industry. The agency is not aware of any significant compatibility problems between ESC systems and other vehicle equipment, and SEMA has not provided any evidence to substantiate such problems, either in its comments or in a subsequent meeting[75] with the agency. So at this point, delay of the final rule would be based upon a speculative concern. Furthermore, we note that with any complex system, the agency cannot

[74] Although the benefit calculation is based on the annual impact for a full, on-road vehicle fleet, it would also represent the lifetime savings for a given model year's fleet.

[75] On January 10, 2007, SEMA officials and other representatives of the aftermarket industry met with agency staff to discuss their concerns with the potential impact of the ESC final rule on their businesses, consistent with SEMA's November 17, 2006 comments. However, despite the passage of almost two months, the industry representatives were still unable to provide any information regarding the nature and scope of the identified problem with aftermarket modifications impacting ESC system functionality, When asked, the industry representatives were not able verifiably identify any modifications that would or would not cause failure of the ESC systems. (For a record of this meeting, *see* Docket No. NHTSA–2006–25801–55.).

hypothesize on all possible interactions between required safety technologies and different vehicle equipment.

Therefore, for all these reasons, NHTSA will not delay the final rule until all possible interactions are known and documented, because that would frustrate the agency's purpose of saving lives as soon as possible. However, NHTSA recognizes that ESC systems vary from vehicle to vehicle, and that additional information will help the agency and industry to better understand how ESC systems interact with other vehicle equipment and systems. NHTSA will continue to monitor the data and testing information we receive on this issue, and we encourage all interested parties to share relevant information with the agency and the public as it becomes available. Additionally, should we later find significant safety risks associated with the interaction between ESC systems and other equipment and systems (whether aftermarket or otherwise), NHTSA will work toward adjusting the ESC standard to address these possible problems.

Furthermore, NHTSA disagrees that it should require ESC systems to be capable of adapting to subsequent vehicle modifications, because we question the feasibility and practicability of such a requirement due to the varied and voluminous nature of the aftermarket vehicle equipment market. Likewise, NHTSA is not mandating a requirement that ESC systems be capable of being modified by installers to accommodate aftermarket equipment. NHTSA does not believe that such a requirement is necessary, given that the agency has not been presented with any evidence of a safety problem or a compatibility problem between ESC and other vehicle systems or equipment, and given the tendency for the market to respond to consumer demands that sufficient information be provided to permit third party vehicle servicing. Nonetheless, NHTSA strongly encourages SEMA and its members to develop relationships with vehicle and ESC system manufacturers to research and find solutions to these questions.

(a) System Adaptability and Sharing ESC Information

In describing the need for an ESC system to be ''adjustable'' to subsequent modifications (such as ones permitting enhanced towing capacity), SEMA stated that the ESC system should be sufficiently flexible to allow for relocated vehicle centers of gravity,[76] and changes in roll rate, lateral acceleration, and related dynamics (*e.g.*, changes that may accompany installation of an aftermarket suspension system). SEMA called upon NHTSA to require ESC systems with ''adaptive learning'' capabilities, such that the ESC systems recognize subsequent vehicle modifications and make corresponding adjustments so that the vehicle is not taken out of compliance with FMVSS No. 126. In addition, the commenter stated that the agency should require a reprogrammability requirement as part of the final rule, in order to ensure ongoing ESC functionality after subsequent vehicle modifications.

Furthermore, SEMA called for original equipment manufacturers (both ESC suppliers and vehicle manufacturers) to share relevant ESC information with aftermarket manufacturers (*e.g.*, providing access to software used for ESC calibration). The commenter stated that aftermarket on-board computer re-programming companies will also need access to this information. SEMA commented that inability of these aftermarket manufacturers to gain access to ESC on-board communications software may render installers of these products unable to determine methods for keeping the ESC system operational. According to SEMA, ESC manufacturer estimates suggest that aftermarket suppliers will need to operate within three percent of the ESC's predetermined control level, something currently beyond a majority of legal aftermarket products. Because these aftermarket businesses have no knowledge of the operational limits of typical ESC systems, SEMA argued that these businesses need to understand ESC systems' failure modes, as well as the test protocols and standard for compliance (if any), in order to understand the design parameters within which the aftermarket parts must comply and to provide practical objectives for their own products to meet.

NHTSA does not agree that requiring ESC systems to have ''adaptive learning'' capabilities or to be reprogrammable after all subsequent vehicle modifications is necessary or appropriate at this time. In its comments, SEMA has provided no evidence that current ESC systems are even capable of the ''adaptive learning'' or reprogramming, how that would be accomplished, or the cost of achieving such capability if it is possible.[77] (The agency is not aware of any ESC systems with an adaptive learning capability of the type suggested by SEMA.) The requirements NHTSA has decided to mandate through this final rule are already being met by the vast majority of ESC-equipped vehicles in current production. NHTSA cannot mandate equipment or performance requirements without any indication that complying with them would even be possible.

NHTSA agrees with the commenter that sharing of information between vehicle and ESC manufacturers and aftermarket businesses is important, but we do not believe that a requirement that OEMs share ESC information is necessary at this time. Vehicle and ESC system manufacturers undoubtedly realize that aftermarket alterations of vehicles that could affect ESC systems are happening and will continue to happen. NHTSA believes that OEMs will recognize it to be in their best interest to share as much non-proprietary information as possible with the aftermarket sales industry to avoid rendering ESC systems ineffective through subsequent vehicle alterations. Again, NHTSA strongly encourages OEMs and the aftermarket sales industry to work together in this regard, but for now, mandating such cooperation is beyond the scope of this rulemaking.

Furthermore, we agree that consumers and the motor vehicle industry (OEM, aftermarket, and service/repair) should be vigilant in avoiding alterations which could render ESC systems inoperative or lessen their effectiveness. We note that, as mentioned, we do not yet have any reliable information on what these ESC-degrading alterations might be and what effects they might have. Still, to the extent they become aware of problems, as one possible measure, vehicle manufacturers might consider alerting purchasers to alterations that reasonably could render ESC systems inoperative or lessen their effectiveness. We believe that, to the extent needed, vehicle manufacturers are in the best position to communicate specific statements and to make recommendations about which alterations may reasonably be expected to impact ESC systems adversely.

[76] We should note that these modifications identified by SEMA, particularly any that would elevate the vehicle's center of gravity, might affect the stability of the vehicle and raise safety issues that are distinct from those addressed by an ESC system.

[77] In a January 10, 2007 with the agency, SEMA and other representatives of the aftermarket industry stated that TRW Inc. has designed an ESC system capable of adaptive learning regarding changes in tire sizes (*see* Docket No. NHTSA–2006–25801–55). However, even such system would not be expected to be capable of adaptive learning of the numerous aftermarket modifications that could potentially impact the vehicle's ESC system.

(b) ''Make Inoperative'' Prohibition

SEMA argued that, provided the ESC malfunction lamp does not illuminate, installers of aftermarket equipment should not be required to undertake additional action to confirm that the vehicle remains in compliance with FMVSS No. 126. Stated another way, SEMA asserted that if the ESC malfunction telltale does not illuminate, the manufacturer, distributor, dealer, or motor vehicle repair business should be able to assume that the ESC system is operating properly and that the vehicle modifications in question have not violated the ''make inoperative'' prohibition of 49 U.S.C. 30122. The commenter stated that for the agency to hold otherwise would place an impossible burden on the aftermarket industry and have a strong negative impact on many small businesses. According to SEMA, installers generally lack knowledge as to the changes made to vehicles before they arrive at their shops, given the countless possibilities.

Thus, SEMA recommended that NHTSA state in the final rule that when a vehicle has been modified and the malfunction telltale has not been disabled, one may assume that the vehicle remains in compliance with FMVSS No. 126 and that there has been no violation of the ''make inoperative'' prohibition (49 U.S.C. 30122). SEMA reasoned that if the ESC malfunction telltale does illuminate, it will have served its purpose of alerting the consumer as to a potential compatibility problem, thereby permitting corrective action to be taken. The commenter stated that NHTSA has adopted an identical approach for two other safety standards—FMVSS No. 110, *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less*, and FMVSS No. 138, *Tire Pressure Monitoring Systems*.

NHTSA recognizes that in previous rules (*e.g.*, TPMS [78]), we have allowed vehicle modifiers to assume that a vehicle remains in compliance with the relevant FMVSS if a malfunction telltale has not illuminated, but we decline to do so again for the ESC standard for the reasons that follow. SEMA has provided no evidence to establish that aftermarket modifications have already caused ESC system malfunctions or any indication whether such malfunction did or did not illuminate the ESC telltale.

In most cases, we expect that replacement of motor vehicle equipment, such as tire and rims, with replacement or aftermarket equipment of the same size would not impact ESC functionality or result in ''make inoperative'' problems. Replacement of worn or damaged equipment with similar equipment would likely constitute a large majority of instances of aftermarket product usage. However, NHTSA believes that there may well be modifications to vehicles that negatively impact the ESC system without causing the telltale to illuminate (*e.g.*, changing the steering ratio through modification to tie rods and steering arms). It would not be consistent with the agency's safety mission to require drivers to unwittingly forgo the life-saving benefits of ESC, without any indication that the system is malfunctioning due to subsequent vehicle modifications. Therefore, we have decided not to grant SEMA's request. However, NHTSA will seek relevant information, monitor this situation, and take appropriate action as necessary. And again, NHTSA encourages SEMA and its members to develop relationships with vehicle and ESC system manufacturers to research and find solutions to these questions.

In the meantime, persons who modify vehicle may assume that their actions have made the ESC system inoperative if those action result in the ESC malfunction telltale being illuminated or, regardless of whether the telltale illuminates, they know based upon other sources of information that their actions are likely to make the system inoperative.

(c) Pass-Through Certification

Delphi stated that the NPRM indicated that final-stage manufacturers and alterers can rely on the original manufacturer's certification of ESC compliance, provided they make no modifications to a vehicle's brake system. Delphi commented that this cautionary statement by the agency is too narrow, suggesting that there should be clarification that any major modification to the vehicle's dynamic characteristics (*e.g.*, handling, propulsion) may influence ESC operation. According to Delphi, a brake-based ESC system is designed and ''tuned'' or ''calibrated'' for a specific vehicle configuration with a specific dynamic response character (with such character being determined by factors such as mass, distribution of mass, size (length, width, height), tires, suspension/steering geometry, and suspension/steering components, among others, such as likely driving characteristics and conditions). Delphi stated that brake-based ESC systems are designed to accommodate routine variations, but not major modifications affecting a vehicle's handling character. The commenter stated that major modifications of that nature could result in improper operation of the ESC system, causing either unwanted braking or a failure to intervene when needed. Delphi further recommended that the final-stage manufacturer or alterer should consult with the original manufacturer and/or the ESC supplier to determine whether there is a need for adjustments to the vehicle's ESC system in response to the subsequent modifications.

NHTSA recognizes that many different subsequent vehicle modifications have the potential to affect the ability of an ESC system to perform as originally designed. The agency agrees that vehicle/ESC manufacturers and final-stage manufacturers and alterers should communicate as to the effects that subsequent vehicle modifications may have on ESC systems, and we strongly encourage such communication to ensure proper functioning of the ESC system. As with other vehicle technologies that may be affected by final stages of manufacturing or subsequent alterations, NHTSA also encourages OEMs to be in contact with final-stage manufacturers and alterers, to the extent possible, to ensure that the certification of their vehicles under the ESC standard is not compromised.

14. Compliance With Relevant Legal Requirements

(a) Regulatory Flexibility Act

SEMA argued that NHTSA's Regulatory Flexibility Analysis did not consider how the rule would potentially impact manufacturers, installers, and retailers of aftermarket products that would have the potential to interact with the ESC system when installed on the vehicle. The commenter stated that the agency is obligated under the Regulatory Flexibility Act to consider all reasonable alternatives for crafting the least burdensome rule. SEMA suggested that the agency's analysis was inadequate because it did not also focus on the aftermarket industry. Mr. Sparhawk also argued that the NPRM failed to adequately analyze the reasonably foreseeable impacts of the proposed ESC requirement on small businesses, as required by the

[78] We believe that the TPMS rulemaking is distinguishable from the present ESC rulemaking, because for TPMS, the agency had a reasonable degree of certainty that the malfunction indicator would be able to detect any aftermarket modifications (*e.g.*, installation of replacement tires) likely to affect the system's operation. In contrast, given the complexity of the ESC system and the greater number of modifications with the potential to impact its proper functioning, we do not have the same level of confidence that the driver would be accurately informed of the ESC system's status in all cases.

Regulatory Flexibility Act, because it does not consider the impacts on vehicle repair businesses, instead only addressing the effects of the proposal on large manufacturers.

In response, we note that NHTSA is not required to perform a regulatory flexibility analysis for entities not directly impacted by its rulemaking. In its 2003 publication titled ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' (''RFA Guide''), the Small Business Administration states that ''[t]he courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them.'' [79] The cases cited by the RFA Guide indicate that a rule ''directly regulates'' only the entities to which the rule applies—for example, electric utilities but not independent electricity cooperatives in a FERC rate-setting regulation,[80] or automobile manufacturers but not aftermarket businesses in an EPA ''deemed-to-comply'' rule.[81] In *Motor & Equipment Mfrs. Ass'n* v. *Nichols*, the DC Circuit described the distinction as follows: ''The RFA itself distinguishes between small entities subject to an agency rule, to which its requirements apply, and those not subject to the rule, to which the requirements do not apply.'' [82]

This final rule establishes performance and equipment requirements for ESC systems. The only entities subject to these requirements are vehicle manufacturers and manufacturers of ESC systems. NHTSA has already analyzed the potential impacts of the rule on these directly affected entities, as the final regulatory flexibility analysis (contained within the FRIA) makes clear. Nothing in this rule subjects the entities described by SEMA and Mr. Sparhawk to NHTSA's regulation.

With that said, although NHTSA has no obligation to perform a regulatory flexibility analysis to consider the potential impacts of this final rule on such non-directly regulated entities, we are nevertheless concerned about the impact our rules have on all affected parties. Again, we have considered the effects that the ESC final rule might have on aftermarket motor vehicle equipment manufacturers and the motor vehicle service industry. The agency is not aware of any significant compatibility problems between ESC systems and other vehicle equipment. However, we note that with any complex system, the agency cannot hypothesize on all possible interactions between required safety technologies and different vehicle equipment. Again, we do not believe it appropriate to delay this final rule for ESC systems and the significant safety benefits accompanying them on the basis of speculative arguments regarding compatibility problems for which there is no evidence; we believe that this is particularly so in light of the substantial number of vehicles currently equipped with ESC systems—some portion of which it is expected would have had aftermarket modifications of the types suggested by SEMA—and given that there has been no indication of any problem to date. However, to the extent information suggesting such a problem exists, the agency will carefully consider it.

(b) Executive Orders 12866 and 13258

SEMA stated that Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 13258, requires agencies to write all rules in plain language, and it also stated that the Administrative Procedure Act (APA) requires agencies to include issues of consequence within a rulemaking and to provide the opportunity for public comment. SEMA argued that the agency's ESC proposal did not properly assess the impact of the ESC rule on the aftermarket community and that any such impacts (*e.g.*, how the ''make inoperative'' prohibition applies to their activities) should be stated in plain language in the rule.

NHTSA agrees that agencies are required to write rules in plain language and to address and provide an opportunity for public comment on the substance of the rulemaking, as well as its impact. However, for the reasons discussed in the response to the Regulatory Flexibility Act comment above, NHTSA disagrees that it is obligated to assess the indirect impact of the ESC rule on the aftermarket community (entities described by SEMA) or state any such impacts in the rule. Nevertheless, because we are concerned about the impact our rules have on all affected parties, we have considered the effects that the ESC final rule might have on aftermarket motor vehicle equipment manufacturers and the motor vehicle service industry. Again, the agency is not aware of any significant compatibility problems between ESC systems and other vehicle equipment.

(c) Vehicle Safety Act

SEMA asserted that NHTSA's proposed rule does not meet the practicability requirement of the Safety Act, because it could ''potentially lead to millions of [subsequently-modified] vehicles whose compliance with the ESC standard would be unknown.'' SEMA also argued that the rule could ''deny consumers the right to accessorize their vehicles with products that may provide additional safety benefits beyond the ESC systems.''

NHTSA disagrees with these comments. SEMA has provided no evidence that the final rule is impracticable under the Safety Act. Vehicles currently include many complex systems, and aftermarket suppliers are able to produce products compatible with those systems; similarly, motor vehicle repair businesses are currently able to obtain sufficient information to perform their work. We do not believe that the situation with ESC will be any different, and NHTSA anticipates that the aftermarket community will be able to work with OEMs and dealers as the phase-in progresses to avoid SEMA's concern. Additionally, this final rule in no way denies consumers the right to modify their vehicles. Individual vehicle owners are not regulated under the Vehicle Safety Act nor under this final rule, and SEMA provided no evidence that these products would be incompatible with ESC systems.

15. ESC Outreach Efforts

(a) ESC Test Procedures Workshop

Honda requested that the agency consider sponsoring a workshop on the ESC test procedures once a final rule has been issued, similar to the one the agency conducted for the TPMS standard. The commenter suggested that such a workshop would be useful to provide manufacturers the opportunity to understand important details of the test procedure and to clarify questions in a practical, hands-on setting.

NHTSA agrees with this suggestion and will plan to have a workshop on the ESC test procedures in the near future.

[79] Office of Advocacy, United States Small Business Administration, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,'' 2003, p. 20.

[80] *Mid-Tex Electric Cooperative, Inc.* v. *Federal Energy Regulatory Commission* (FERC), 773 F.2d 327, 341 (DC Cir. 1985) (stating that ''Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy.'').

[81] *Motor & Equipment Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449, 467 (DC Cir. 1998) (holding that ''Because the deemed-to-comply rule did not subject any aftermarket businesses to regulation, EPA was not required to conduct a flexibility analysis as to small aftermarket businesses. It was only obliged to consider the impact of the rule on small automobile manufacturers subject to the rule, and it met that obligation.'').

[82] *Id.*, fn 18, at 467 (describing 5 U.S.C. 603(b)(3) and (4)).

Details of this ESC workshop will be announced in a separate **Federal Register** notice at least 30 days prior to the scheduled date of the meeting.

(b) Public Information Campaign

SUVOA, an association representing owners of sport utility vehicles, pick-up trucks, and vans, encouraged the agency to undertake a strong public information campaign as part of the final rule for ESC. According to SUVOA, consumers need to understand how newly required safety equipment such as ESC works and how it enhances the safety of their vehicles, and automobile dealerships and their salespeople should similarly be educated regarding the lifesaving benefits of ESC. SUVOA offered to work with the agency to contribute to such communications efforts.

NHTSA's principal public information portals are its main agency Web site (*www.nhtsa.dot.gov*), the Safercar.gov Web site, and its publication ''Buying a Safer Car.'' In these information sources, consumers can already obtain information about what ESC systems do and which vehicles were equipped with ESC systems in 2005, 2006, and 2007. However, we agree with SUVOA about the general desirability of increased public information which could possibly drive demand for ESC systems during the phase-in period. We applaud the efforts of General Motors and Bosch in particular to educate dealers and salesman about ESC, and we encourage other interested parties to help spread the message regarding the important benefits provided by ESC systems.

16. Miscellaneous Issues

(a) Linking Brake Light Illumination to ESC Activation

Consumers Union suggested that whenever the vehicle's ESC system is activated and intervenes, the vehicle's brake lights should be automatically illuminated in order to alert motorists to the rear of potentially slippery conditions and of a slowing vehicle ahead (similar comment by Mr. Petkun). The commenter urged the agency to undertake whatever ancillary amendments to other safety standards that may be necessary to effectuate this change (*e.g.*, possible amendments to FMVSS No. 105, *Hydraulic and Electric Brake Systems*, and FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*).

In our May 26, 2000 letter of interpretation [83] to Mr. C. Thomas Terry of General Motors, NHTSA has already established a policy regarding stop lamps and technologies that make use of the vehicles brakes (including ESC), and we intend to follow that interpretation with regard to FMVSS No. 126, as discussed below. Under our interpretation letter to Mr. Terry, only when a vehicle system operates in a way that is analogous to the driver using the brakes to slow the vehicle should the stop lamps activate. We believe that it is not desirable to change the meaning of the stop lamp signal. Traction control, for example, applies one brake on an axle at a time to limit wheel spin for the purpose of accelerating rather than decelerating the vehicle, so in such cases, stop lamps should not be activated. Adaptive cruise control, on the other hand, uses brakes in the same way as the driver and should activate the stop lamp.

We understand that vehicle manufacturers consider the duration and mode of ESC operation to determine whether to activate the stop lamps (to avoid confusing blinks), but whenever the system augments the reduction of engine power with braking intended to further slow the vehicle (as opposed to a very short application of a single brake simply to change the vehicle's heading), brake lamp activation would be expected to occur.

(b) Vehicles With Dual Wheels on the Rear Axle

According to the Alliance/AIAM, there are a small number (unspecified) of incomplete vehicles with a GVWR of 10,000 pounds or less that are equipped with dual wheels on the rear axle (''dualies''), which are typically completed as commercial vehicles. The commenters stated that these vehicles require their own unique ESC calibration. Based upon the small number of ''dualies'' and their unusual calibration needs, the Alliance/AIAM requested that the agency exclude these vehicles from the present ESC rulemaking and instead consider them as part of any subsequent ESC rulemaking for heavy trucks (a category in which dualies' ESC systems arguably more appropriately belong).

In light of the agency's statutory mandate under section 10301 of SAFETEA–LU, NHTSA does not believe it has the authority to exempt any vehicles with a GVWR of 10,000 pounds or less from the requirements of the Standard No. 126. Accordingly, this final rule applies to passenger cars, multipurpose vehicles, trucks and buses with a gross vehicle weight rating of 4,536 Kg (10,000 pounds) or less, as originally proposed.

(c) ESC Operation With Towed Trailers

According to Mr. Feldhus, ESC systems must be required to have on/off controls for vehicles capable of towing a trailer, because current ESC systems do not communicate with the trailer when intervening to maintain stability. He stated that because the ESC-equipped towing vehicle's brake lights do not activate, the aftermarket trailer's brake controllers cannot participate. He further stated that towing vehicles dive and trailer hitches rise during heavy braking, so unless care is taken, a two-to-four ton trailer could lift and overpower the towing vehicle. Thus, Mr. Feldhus stated that the agency should not mandate ESC systems until such time as it evaluates such effects using special trailer test rigs that have motor-controlled swinging masses and numerous hitch combinations. He also suggested additional tests simulating air disturbance from oncoming trucks on two-lane roads. Ultimately, Mr. Feldhus recommended adopting specific pass/fail towing criteria that vehicle manufacturers must meet, as part of any safety standard for ESC.

We have no evidence supporting the supposition that ESC intervention will adversely affect the safety of a vehicle hauling a trailer, nor has any vehicle or ESC manufacturer told us that lack of communication between a tow vehicle and trailer will negatively affect ESC functionality. ESC systems operate in extreme driving situations where a loss of control is anticipated (*i.e.*, excessive oversteer or understeer situations). On some vehicles with high centers of gravity, ESC may also intervene during impending on-road, untripped rollover situations. In each of these loss-of-control situations, we do not believe ESC stabilization of the tow vehicle would result in a subsequent loss of trailer stability. Accordingly, we see no reason to revise the regulatory text regarding this issue.

However, tow vehicle/trailer safety is an area of ongoing interest to NHTSA, and the agency always welcomes information on ways new technology can improve it. For example, some ESC systems are now being offered with trailer stabilization assist (TSA) control algorithms. These algorithms are specifically designed to help mitigate yaw oscillations that can occur when the vehicle/trailer system is being operated in certain driving situations. These systems operate by using the tow vehicle ESC system to automatically brake the tow vehicle in a way that suppresses the trailer yaw oscillations before they become so large that a loss of control is evident. Evaluating TSA

[83] *See http://isearch.nhtsa.gov/files/21281.ztv.html.*

effectiveness is an area of research presently under consideration at NHTSA.

(d) Wheelchair-Accessible Vehicles

The National Mobility Equipment Dealers Association (NMEDA) commented that ESC system sensors are normally located under one of the front row seats. NMEDA argued that because ESC systems are position-sensitive, their relocation is likely to affect the accuracy, performance, and effectiveness of those systems. (The commenter pointed to the fact that yaw rate and sideslip are functions of the vehicle center of gravity, and also, the ESC's horizontal plane of reference will likely be altered when an ESC system is relocated, further altering its performance.) The organization expressed concern that whenever the system sensors must be moved in the process of modifying vehicles to make them accessible to the disabled, the ESC system could generate potentially dangerous and unpredictable vehicle responses under certain driving conditions.

Therefore, NMEDA recommended that the final rule should require an original equipment manufacturer to provide a means to permanently deactivate an ESC system for vehicles manufactured, altered, or modified after first sale to accommodate persons with disabilities. According to NMEDA, it would be possible to ensure that the ESC system is not accidentally activated by equipping the vehicle with a permanent, key-operated ''off'' mechanism and an associated warning lamp (similar to one provided on an air bag deactivation system). Alternatively, NMEDA stated that the agency could specify in the final rule that third parties are permitted to permanently deactivate the ESC system on vehicles that are manufactured, altered, or modified after first sale to be accessible to persons with disabilities.

In response to the commenter's concerns about vehicles modified to make them accessible to disabled individuals, NHTSA believes that no change is necessary as part of the ESC final rule. Parties who must certify that their vehicles are in compliance with Federal motor vehicle safety standards prior to first retail sale should have the capability to ensure the functionality of the ESC system installed in their vehicles. However, aftermarket modifiers who adapt vehicles for persons with disabilities would not likely be able to move ESC components without some level of assistance from vehicle manufacturers or ESC system suppliers.

We strongly urge OEMs to work with vehicle modifiers to identify alternative locations or other modification methods so that the benefits of ESC may be retained for drivers of adapted vehicles. The number of vehicles that are popular for adaptations for persons with disabilities is quite limited, and we believe it is practical for manufacturers to provide assistance to modifiers who must remove OEM seats, supply alternative seats, or modify floors, so that the modifiers may relocate ESC components in a way that preserves the proper functioning of the system. (We understand that General Motors already provides some technical assistance to those adapting its vans for disabled persons.) NHTSA would be willing to host a technical session to be attended by OEM engineers, ESC manufacturer engineers, and representatives of aftermarket modifiers to facilitate this discussion.

In addition, NHTSA will consider whether it is necessary to add language to 49 CFR 595 Subpart C, *Vehicle Modifications to Accommodate People With Disabilities*, to exempt the modifier from the ''make inoperative'' prohibition of 49 U.S.C 30122, as it applies to FMVSS No. 126 in the event that: (1) The ESC sensor must be moved in the modification of a vehicle after first retail sale to accommodate a person with a disability, and (2) the OEM has not provided an alterative position.

## V. Benefits and Costs

### *A. Summary*

This section summarizes our analysis of the benefits, costs, and cost per equivalent life saved as a result of the ESC requirements contained in this final rule. As noted previously, the life- and injury-saving potential of ESC is very significant, both in absolute terms and when compared to prior agency rulemakings. We anticipate that this final rule for ESC, compared to a baseline of manufacturers' plans of having 71 percent of the light vehicle fleet with ESC by MY 2011, will save 1,547 to 2,534 lives and cause a reduction of 46,896 to 65,801 MAIS 1–5 injuries annually once all passenger vehicles have ESC. This compares favorably with the Regulatory Impact Analyses for other important rulemakings such as FMVSS No. 208 mandatory air bags (1,964 to 3,670 lives saved), FMVSS No. 214 side impact protection (690 to 1,030 lives saved [84]), and FMVSS No. 201 upper interior head impact protection (870 to 1,050 lives saved). The ESC final rule is expected to also save $376 to $535 million annually in property damage and travel delay (undiscounted). The total cost of this final rule is estimated to be $985 million.

The ESC final rule is extremely cost-effective. The cost per equivalent life saved is expected to range from $0.18 to $0.33 million at a 3 percent discount and $0.26 to $0.45 million at a 7 percent discount. Again, the cost-effectiveness for ESC compares favorably with the Regulatory Impact Analyses for other important rulemakings such as FMVSS No. 202 head restraints safety improvement ($2.61 million per life saved), FMVSS No. 208 center seat shoulder belts ($3.39 to $5.92 million per life saved), FMVSS No. 208 advanced air bags ($1.9 to $9.0 million per life saved), and FMVSS No. 301 fuel system integrity upgrade ($1.96 to $5.13 million per life saved).

For a more complete discussion of the benefits and costs associated with this rulemaking for ESC, please consult the Final Regulatory Impact Analysis (FRIA), which is available in the docket for this rulemaking.

### *B. ESC Benefits*

As discussed in detail in Chapter IV (Benefits) of the FRIA, we anticipate that, when all light vehicles have ESC, this rulemaking would prevent 67,466 to 90,807 crashes (1,430 to 2,354 fatal crashes and 66,036 to 88,453 non-fatal crashes). Preventing these crashes entirely is the ideal safety outcome and would translate into 1,547 to 2,534 lives saved and 46,896 to 65,801 MAIS 1–5 injuries prevented.

The above figures include benefits related to rollover crashes, a subset of all crashes. However, in light of the relatively severe nature of crashes involving rollover, ESC's contribution toward mitigating the problem associated with this subset of crashes should be noted. We anticipate that this rulemaking would prevent 35,680 to 39,387 rollover crashes (1,076 to 1,347 fatal crashes and 34,604 to 38,040 non-fatal crashes). This would translate into 1,171 to 1,465 lives saved and 33,001 to 36,420 MAIS 1–5 injuries prevented in rollovers.

In addition, preventing crashes would also result in benefits in terms of travel delay savings and property damage savings. We estimate that this rulemaking would save $376 to $535

[84] Note that estimates for the FMVSS No. 214 rulemaking are from the agency's preliminary regulatory analysis that accompanied the notice of proposed rulemaking. When the final rule is published, the revised regulatory analysis will reflect the impact of today's ESC final rule, which will reduce the benefit of the FMVSS No. 214 rule.

million, undiscounted,[85] in these two categories ($240 to $269 million of this savings is attributable to prevented rollover crashes).

We further note that this rule also has the effect of causing all light vehicles to be equipped with anti-lock braking systems (ABS) as a foundation for ESC. We anticipate some level of benefits from improved brake performance on vehicles not currently equipped with ABS, but have not attempted to quantify them. However, the potential benefits of ABS did not influence our effectiveness estimates for ESC, because all of the non-ESC control vehicles in the study already had ABS. The measure of unquantified benefits relates to situations where the ABS system activates (but the ESC system does not need to) on vehicles that were not previously equipped with ABS.

*C. ESC Costs*

In order to estimate the cost of the additional components required to equip every vehicle in future model years with an ESC system, assumptions were made about future production volume and the relationship between equipment found in anti-lock brake systems (ABS), traction control (TC), and ESC systems. We assumed that in an ESC system, the equipment of ABS is a prerequisite. Thus, if a passenger car did not have ABS, it would require the cost of an ABS system plus the additional incremental costs of the ESC system to comply with an ESC standard. We assumed that traction control (TC) was not required to achieve the safety benefits found with ESC. We estimated a future annual production of 17 million light vehicles consisting of nine million light trucks and eight million passenger cars.

An estimate was made of the MY 2011 installation rates of ABS and ESC. It served as the baseline against which both costs and benefits are measured. Thus, the cost of the standard is the incremental cost of going from the estimated MY 2011 installations to 100 percent installation of ABS and ESC. The estimated MY 2011 installation rates are presented in Table 6.

TABLE 6.—MY 2011 PREDICTED INSTALLATIONS

[Percent of the light vehicle fleet]

| | ABS | ABS + ESC |
|---|---|---|
| Passenger Cars .... | 86 | 65 |
| Light Trucks ..... | 99 | 77 |

[85] The present discounted value of these savings ranges from $247 to $436 million (based on 3 percent and 7 percent discount rates).

Based on the assumptions above and the data provided in Table 6, Table 7 presents the percent of the MY 2011 fleet that would need these specific technologies in order to equip all light vehicles with ESC.

TABLE 7.—PERCENT OF THE LIGHT VEHICLE FLEET REQUIRING TECHNOLOGY TO ACHIEVE 100% ESC INSTALLATION

| | None | ABS + ESC | ESC only |
|---|---|---|---|
| Passenger Cars | 65 | 14 | 21 |
| Light Trucks ..... | 77 | 1 | 22 |

The cost estimates developed for this analysis were taken from tear down studies that contractors have performed for NHTSA. This process resulted in estimates of the consumer cost of ABS at $368 and the incremental cost of ESC at $111. Thus, it would cost a vehicle that does not have ABS currently, $479 to meet the requirements of this final rule. Combining the technology needs in Table 7 with the cost above and assumed production volumes yields the cost estimate in Table 8 for the ESC standard. Thus, for example, the average cost for passenger cars, including both those that require installation of an ESC system and those that already have it, is $90.

TABLE 8.—SUMMARY OF VEHICLE COSTS FOR THE ESC STANDARD

[2005$]

| | Average vehicle costs | Total costs (millions) |
|---|---|---|
| Passenger Cars .... | $90.3 | $722.5 |
| Light Trucks ..... | 29.2 | 262.7 |
| Total ..... | 58.0 | 985.2 |

In summary, Table 8 shows that requiring electronic stability control and anti-lock brakes will increase the cost of new light vehicles on average by $58, totaling $985 million annually across the new light vehicle fleet.

In addition, we note that this final rule is expected to add weight to vehicles and consequently to increase their lifetime use of fuel. Most of the added weight is for ABS components and very little is for the ESC components. Since 99 percent of light trucks are predicted to have ABS in MY 2011, the weight increase for light trucks is less than one pound and is considered negligible. The average weight gain for passenger cars is estimated to be 2.13 pounds, resulting in 2.6 more gallons of fuel being used over the lifetime of these vehicles. The present discounted value of the added fuel cost over the lifetime of the average passenger car is estimated to be $2.73 at a 7 percent discount rate and $3.35 at a 3 percent discount rate.

We have not included in these cost estimates, allowances for ESC system maintenance and repair. Although all complex electronic systems will experience component failures from time to time necessitating repair, our experience to date with existing systems is that their failure rate is not outside the norm. Also, there are no routine maintenance requirements for ESC systems.

## VI. Regulatory Analyses and Notices

*A. Vehicle Safety Act*

As noted above, the agency is implementing the ESC language in SAFETEA–LU through promulgation of a Federal motor vehicle safety standard for ESC pursuant to 49 U.S.C. Chapter 301, *Motor Vehicle Safety*. Thus, in developing this final rule for ESC, the agency carefully considered the statutory requirements of both SAFETEA–LU and 49 U.S.C. Chapter 301.

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[86] These motor vehicle safety standards set the minimum level of performance for a motor vehicle or motor vehicle equipment to be considered safe.[87] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[88] The Secretary also must consider whether a standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[89] The responsibility for promulgation of

[86] 49 U.S.C. 30111(a).
[87] 49 U.S.C. 30102(a)(9).
[88] 49 U.S.C. 30111(b).
[89] *Id.*

Federal motor vehicle safety standards has been delegated to NHTSA.[90] We describe below our consideration of these provisions.

First, in preparing this document, the agency carefully evaluated available research, testing results, and other information related to ESC technology. The agency performed extensive research on its own and made use of research performed by the Alliance of Automobile Manufacturers and its member companies, plus research from Hyundai/Kia. We also performed analyses of ESC using actual crash data to determine the effectiveness of ESC in reducing single-vehicle crashes and rollovers. Furthermore, the agency carefully considered all of the public comments submitted on the NPRM for ESC, along with any accompanying data, and responded to such information as part of this final rule. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the ESC requirements are practicable, the agency research and the industry research documented the capabilities of current ESC systems and dynamic performance of model year 2005 vehicles equipped with them. ESC is a developed technology that is currently available on a wide variety of vehicle types and models. We have concluded that all current production vehicles equipped with ESC systems are capable of complying with the equipment requirements, that all but one current vehicle model are capable of complying with the performance tests, and that only minor software tuning would be required to bring that vehicle model into compliance. In sum, we believe that this final rule is practicable for fleet-wide implementation, in that it may be implemented with existing technology and is quite cost-effective, given its potential to prevent thousands of deaths and injuries each year, particularly those associated with single-vehicle crashes leading to rollover.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what equipment constitutes an ESC system, what performance is required, and how performance is tested under the standard. The final rule's definition of an ''ESC System'' is based on a voluntary consensus definition developed by the Society of Automotive Engineers (SAE). The rule also includes performance requirements and test procedures for the timing and intensity of the oversteer intervention by the ESC system (*i.e.*, a lateral stability criterion) and the responsiveness of the vehicle (*i.e.*, a vehicle responsiveness criterion). This test procedure involves a precisely-defined steering pattern performed by a robotic steering machine under a defined set of test conditions (*e.g.*, ambient temperature, road test surface, vehicle load, vehicle speed). Performance is defined by objective measurements of yaw rate and lateral acceleration taken by scientific instruments at precise times with reference to the steering pattern. The standard's test procedures carefully delineate how such testing is conducted.

Historically, the agency has striven to set motor vehicle safety standards that are as performance-based as possible, but we have interpreted our mandate as permitting the adoption of more specific regulatory requirements when such action is in the interest of safety. In the present case, the agency cannot specify a practicable and repeatable dynamic understeer performance test at this time. As discussed in Section IV.C.4 above, there is no available test for effective understeer intervention in non-linear-handling, loss-of-control situations, and the agency's own research efforts were not able to identify a broadly applicable test for understeer that would ensure intervention by the ESC system in all appropriate cases. However, as the court held in *Chrysler Corporation* v. *DOT*,[91] NHTSA may specify equipment requirements as part of an FMVSS where development of a performance standard alone would not be practicable or meet the need for motor vehicle safety. Such is the case here, thereby necessitating our adoption of a definitional requirement for an ESC system (based upon the definition in SAE J2564) that has the components/capabilities for effective understeer (and oversteer) intervention, consistent with current production systems. However, the agency will continue its research effort pertaining to ESC understeer intervention and will consider amending the standard in the future, as appropriate.

In light of the above, the agency believes that the regulatory requirements and test procedures in this final rule are sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the requirements of the ESC standard.

Finally, we believe that this final rule is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the agency is addressing Congress' concern about rollover crashes resulting in fatalities and serious injuries. Under section 10301 of SAFETEA–LU, Congress mandated installation of stability enhancing technologies in new vehicles to reduce rollovers. NHTSA has determined that ESC systems meeting the requirements of this final rule offer an effective countermeasure to rollover crashes and to other single-vehicle and certain multi-vehicle crashes. Accordingly, we believe that this final rule is appropriate for vehicles subject to these provisions because it furthers the agency's objective of preventing deaths and serious injuries, particularly those associated with rollover crashes.

*B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be economically significant under the Executive Order, and it is also a subject of congressional interest and a mandate under section 10301 of SAFETEA–LU. The agency has prepared and placed in the docket a Final Regulatory Impact Analysis. This rulemaking action is also significant within the meaning of the

[90] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

[91] 515 F.2d 1053 (6th Cir. 1975) (*holding* that NHTSA's specification of dimensional requirements for rectangular headlamps constitutes an objective performance standard under the Vehicle Safety Act).

Department of Transportation's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, this rulemaking document was reviewed by the Office of Management and Budget under Executive Order 12866, ''Regulatory Planning and Review.'' The agency has estimated that compliance with this rule would cost approximately $985 million per year and have net benefits as high as $11.4 billion per year. Thus, this rule would have greater than a $100 million effect.

*C. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory or flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act and has included a final regulatory flexibility analysis in the FRIA. This analysis discusses potential regulatory alternatives that the agency considered that would still meet the identified safety need of reducing the occurrence of rollovers through stability enhancing technologies. Alternatives considered included (a) Applying the standard to light trucks but not to passenger cars and (b) permitting front-wheel-only ESC systems that are incapable of understeer intervention. The first alternative was rejected because passenger car ESC systems would save 945 lives and reduce 32,196 injuries annually at a cost per equivalent fatality that would easily justify a separate rule for passenger cars. The second alternative was rejected because front-wheel-only ESC systems would prevent 30 percent fewer single-vehicle crashes without producing a large cost saving.

To summarize the conclusions of that analysis, the agency believes that the final rule will have a significant economic impact on a substantial number of small businesses. There are currently four small domestic motor vehicle manufacturers in the United States, each having fewer than 1,000 employees. Although the cost for an ESC system is relatively high, we believe that these manufacturers should be able to pass the associated costs on to purchasers without decreasing sales volume, because the demand for the high-end, luxury vehicles produced by these manufacturers tends to be inelastic and the increase in total vehicle cost is expected to be only 0.2–1.1 percent.

There are a significant number of final-stage manufacturers and alterers likely to be impacted by the final rule for ESC, some of which buy incomplete vehicles. However, final-stage manufacturers and alterers typically do not modify the brake system of the vehicle (the modification most likely to impact ESC), so the original manufacturer's certification of the ESC system should pass through for these vehicles. To the extent other subsequent vehicle modifications have the potential to affect the ability of an ESC system to perform as originally designed, we encourage vehicle/ESC manufacturers and final-stage manufacturers and alterers to communicate as to the effects that subsequent vehicle modifications may have on ESC systems in order to ensure continued proper functioning. As with other vehicle technologies that may be affected by final stages of manufacturing or subsequent alterations, NHTSA also encourages OEMs to be in contact with final-stage manufacturers and alterers, to the extent possible, to ensure that the certification of their vehicles under the ESC standard is not compromised. We believe that increased costs associated with ESC will impact all such final-stage manufacturers and alterers equally, and that such costs will be passed on to consumers. Furthermore, we have no reason to believe that an average cost of $90 per passenger car and $29 per truck will cause a significant decline in overall vehicle sales.

We do not expect manufacturers of ESC systems to be classified as small businesses.

The agency also received public comments from SEMA and Mr. Sparhawk arguing that the agency is bound to address the indirect effects that this regulation would have on installers of aftermarket vehicle equipment and motor vehicle repair businesses.

Although our response to these commenters is discussed more fully under Section IV.C.14(a), we repeat that this final rule establishes performance and equipment requirements for ESC systems and that the only entities subject to and directly affected by these requirements are vehicle manufacturers and manufacturers of ESC systems. Nothing in this rule subjects the entities described by SEMA and Mr. Sparhawk to NHTSA's regulation. However, NHTSA nevertheless considered the effects that the ESC final rule might have on aftermarket motor vehicle equipment manufacturers and the motor vehicle service industry, and based upon that analysis, the agency is not aware of any significant compatibility problems between ESC systems and other vehicle equipment. Although the agency will continue to monitor this issue, we do not believe it appropriate to delay this final rule for ESC systems and the significant safety benefits accompanying them on the basis of speculative arguments regarding compatibility problems for which there is no evidence.

*D. Executive Order 13132 (Federalism)*

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications, because the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30102(b)(1). In addition, we note that this final rule establishing a safety standard for electronic stability control systems was mandated by Congress, pursuant to section 10301 of SAFETEA–LU. It is this statutory command that preempts State law, not today's

rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. *See Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's standard and test regime. NHTSA may opine on such conflicts in the future, if warranted. *See id.* at 883–86.

*E. Executive Order 12988 (Civil Justice Reform)*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

*F. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)*

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although the rule for ESC has been determined to be an economically significant regulatory action under Executive Order 12866, the problems associated with loss of vehicle control equally impact all persons riding in a vehicle, regardless of age. Consequently, this final rule does not involve a decision based on environmental, health, or safety risks that disproportionately affect children and would not necessitate further analyses under Executive Order 13045.

*G. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the PRA.

*Agency:* National Highway Traffic Safety Administration (NHTSA).

*Title:* Phase-In Production Reporting Requirements for Electronic Stability Control Systems.

*Type of Request:* Routine.

*OMB Clearance Number:* 2127-New.

*Form Number:* This collection of information will not use any standard forms.

*Affected Public:* The respondents are manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a gross vehicle weight rating of 4,536 Kg (10,000 pounds) or less. The agency estimates that there are about 21 such manufacturers.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:* NHTSA estimates that the total annual hour burden is 42 hours.

*Estimated Costs:* NHTSA estimates that the total annual cost burden, in U.S. dollars, will be $2,100. No additional resources would be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own uses.

*Summary of Collection of Information:* This collection would require manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 Kg (10,000 pounds) or less to provide motor vehicle production data for the following three years: September 1, 2008 to August 31, 2009; September 1, 2009 to August 31, 2010; and September 1, 2010 to August 31, 2011.

*Description of the Need for the Information and the Proposed Use of the Information:* The purpose of the reporting requirements will be to aid NHTSA in determining whether a manufacturer has complied with the requirements of Federal Motor Vehicle Safety Standard No. 126, *Electronic Stability Control Systems*, during the phase-in of those requirements. In the NPRM, NHTSA requested comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. No comments were received on this issue.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

The equipment requirements of this standard are based (with minor modifications) on the SAE Surface Vehicle Information Report on Automotive Stability Enhancement Systems J2564 Rev JUN2004 that provides an industry consensus definition of an ESC system. However, there is no voluntary consensus standard for ESC that contains any specifications for a performance test.

The agency has also incorporated by reference two standards developed by the American Society for Testing and Materials (ASTM) in order to provide specifications for road test surface conditions for use in the standard's test procedures. These are: (1) ASTM E1337–90 (rev. 1996), *Standard Test Method for Determining Longitudinal*

*Peak Braking Coefficient of Paved Surfaces Using a STD Reference Test Tire*; and (2) ASTM E1136–93, *Standard Specification for a Radial Standard Reference Test Tire* (1993).

*I. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995, currently $122 million in 2005 dollars). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $122 million annually, but it will result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers.

As noted above, this rulemaking is being promulgated pursuant to section 10301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU). As part of this final rule, the agency is presenting not only its regulatory approach for ESC, but also the regulatory alternatives it considered; we also present a detailed discussion of the costs and benefits associated with the rule (*see* the FRIA and also Section V of this document).

In terms of regulatory alternatives considered, the agency analyzed three possibilities: (1) Limiting the standard's applicability to light trucks and vans (LTVs); (2) permitting use of 2-channel ESC systems; and (3) three different potential phase-in schedules.[92] The following briefly explains the conclusions that the agency reached in analyzing these available alternatives.

Although the first alternative reduces overall costs of the regulation and increases cost-effectiveness (based upon the higher propensity for LTVs to roll over), the agency rejected it because our analysis showed that requiring ESC for passenger cars would save 945 lives and reduce 32,196 non-fatal injuries. These benefits were substantial in their own right (a net benefit of $4.7 billion at a 3 percent discount rate and $3.7 billion at a 7 percent discount rate). Further, ESC was found to be highly cost-effective for passenger cars alone ($0.38 million at a 3 percent discount rate and $0.50 million at a 7 percent discount rate).

Although the second alternative would have reduced the cost of the regulation by approximately $10 per vehicle, the agency rejected that alternative because the agency's research showed a potentially enhanced safety benefit from 4-channel ESC systems, as compared to 2-channel systems, and also because of the strong industry trend toward providing 4-channel systems. A more detailed analysis of the regulatory alternatives considered by the agency may be found in the FRIA (*see* FRIA Chapter VII).

In terms of the alternative phase-in schedules, the agency analyzed a number of potential alternatives to identify the schedule that would facilitate ESC installation in the light vehicle fleet as expeditiously as possible, while at the same time ensure the financial and technological practicability of the final rule (in keeping with our statutory mandate). To this end, the agency analyzed the product plans submitted by six vehicle manufacturers, whose combined production accounts for approximately 87 percent of the new light vehicle fleet. As explained in Chapter VII of the FRIA, we examined three different potential phase-in schedules to find the right balance among these competing concerns.

Two factors were controlling in making the decision as to which alternative to choose: (1) The ability of manufacturers to change vehicles from being equipped with optional ESC to standard ESC for MY 2010 and MY 2011; and (2) Not forcing any manufacturer to install ESC in any make/model for which it was not planned to be at least an option. The agency did not believe there was enough lead time to redesign such a make/model to include ESC by MY 2009. While there may be enough time to redesign a make/model to include ESC by MY 2010, given the carry forward provisions, this was not necessary for any of the six manufacturers for MY 2010. The second consideration became a factor once again in MY 2011, in not going beyond 95 percent (thereby obviating the costly need to redesign and develop tooling for a few vehicle lines which will not be produced in MY 2012).

Based upon this product plan information and the desire to provide manufacturers with flexibility, we chose the most aggressive phase-in alternative with a carry forward provision that we believe is reasonable (*i.e.*, 55/75/95%). (We note that the estimates below are compared to a baseline of the NPRM's proposed phase-in schedule of 30/60/90% with carry-forward credits.) Although the 55/75/95% phase-in alternative was not the least costly (expected to increase total compliance costs by $295 million), it was nevertheless very cost-effective ($0.394 to $0.640 million per equivalent life saved at a 3 percent discount rate; $0.496 to $0.802 million per equivalent life saved at a 7 percent discount rate). Further, this alternative also had the potential to substantially increase the number of prevented fatalities (336–550) and injuries (10,174–14,276) over the lifetime of the three model years in the phase-in period. Although the 55/75/95% without carry-forward credits alternative theoretically had higher benefits and was more cost-effective, the agency determined that based upon available product plan information, it may not be practical for manufacturers to achieve such high installation rates in such a short timeframe without carry-forward credits. Accordingly, the agency believes that the alternative chosen will provide the highest achievable level of incremental benefits among the schedules with a carry-forward provision, a feature the agency determined was necessary for reasonable implementation of the standard.

Accordingly, in light of the substantial benefits in terms of fatalities and injuries prevented (discussed at length in the FRIA and elsewhere in this document), the agency decided to adopt an ESC requirement for all light vehicles, even though this alternative was not the least costly, most cost-effective, or least burdensome available. In light of the demonstrated effectiveness of ESC in preventing single-vehicle crashes (including rollovers), the agency decided that it would be inappropriate to not make the

[92] As explained in Chapter VII of the FRIA, the agency assessed the following potential phase-in schedules for ESC: (A) 30%/60%/90% with carry forward credits (as proposed in the NPRM); (B) 55%/75%/95% with carry forward credits; and (C) 55%/75%/95% without carry forward credits.

life-saving benefits of ESC available to all vehicle occupants and in the shortest timeframe that the agency determined to be both reasonable and practicable. As noted previously, we have determined that the final rule's phase-in schedule may be accomplished without disruptive changes in manufacturer and supplier production processes.

In addition, as part of the public comment process, the agency's NPRM also invited suggestions regarding ways to promote flexibility and to minimize costs of compliance, while achieving the safety purposes of SAFETEA–LU. The overwhelming majority of public comments supported the ESC rulemaking and offered no suggested substitute. However, commenters did suggest numerous technical changes that might be characterized as promoting flexibility or minimizing costs. Each such issue is addressed in this final rule.

*J. National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

*K. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*L. Privacy Act*

Please note that 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.*

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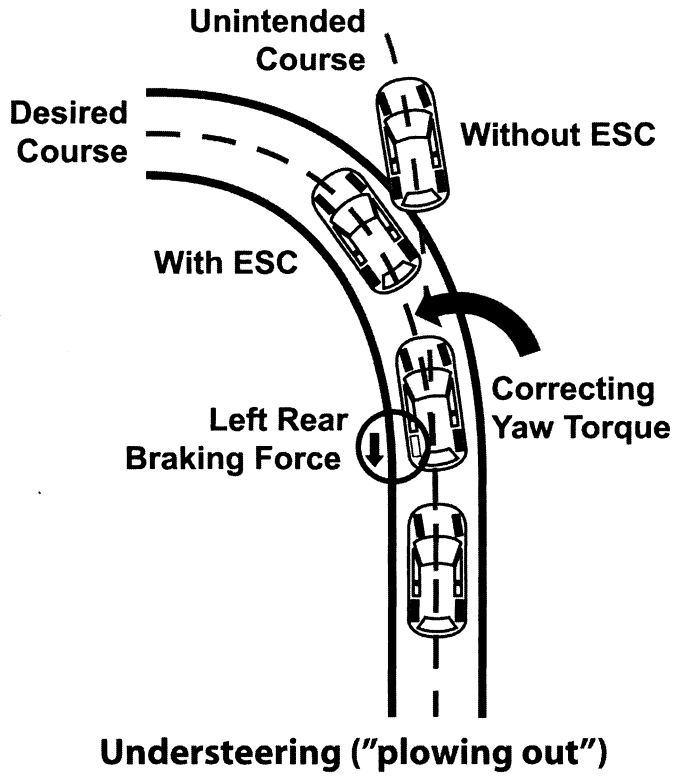
**Figure to Preamble**



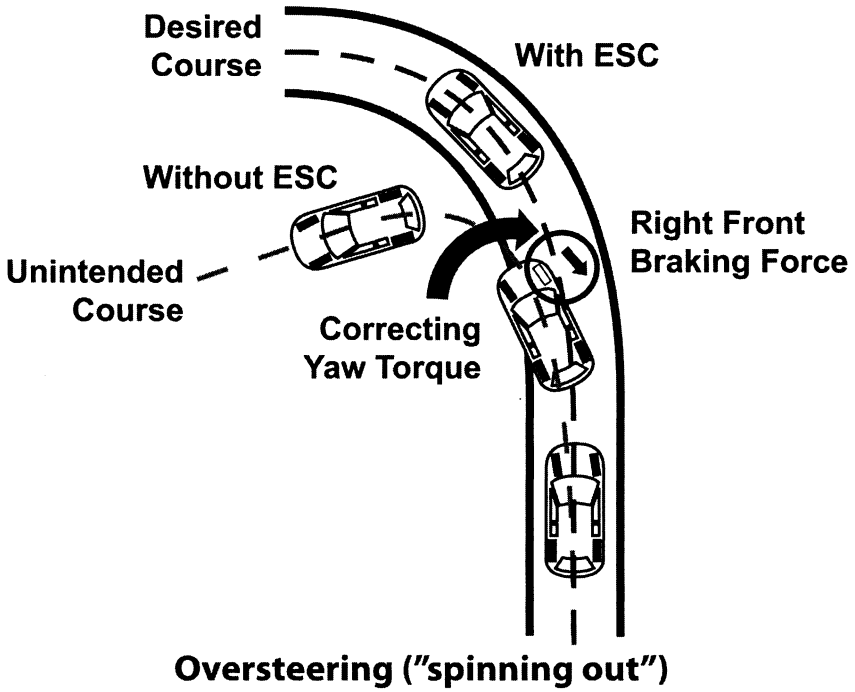




Figure 1. ESC Interventions for Understeering and Oversteering

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**List of Subjects in 49 CFR Parts 571 and 585**

Imports, Incorporation by reference, Motor vehicle safety, Report and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 and 585 as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.101 is amended by revising the section heading, S5.5.2, S5.5.5, and Table 1 to read as follows:

### § 571.101 Standard No. 101; Controls and displays.

* * * * *

S5.5.2. The telltales for any brake system malfunction required by Table 1 to be red, air bag malfunction, low tire pressure, electronic stability control malfunction, passenger air bag off, high beam, turn signal, and seat belt must not be shown in the same common space.

* * * * *

S5.5.5. In the case of the telltale for a brake system malfunction, air bag malfunction, side air bag malfunction, low tire pressure, electronic stability control malfunction, passenger air bag off, high beam, turn signal, or seat belt that is designed to display in a common space, that telltale must displace any other symbol or message in that common space while the underlying condition for the telltale's activation exists.

* * * * *

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**Table 1**
**Controls, Telltales, and Indicators with Illumination or Color Requirements** [1]

| Column 1 ITEM | Column 2 SYMBOL | Column 3 WORDS OR ABBRE-VIATIONS | Column 4 FUNCTION | Column 5 ILLUMIN-ATION | Column 6 COLOR |
|---|---|---|---|---|---|
| Highbeam [2] | [3,5] | — | Telltale | — | Blue or Green [4] |
| Turn signals [2] | [3,6] | — | Control | — | — |
| | | | Telltale | — | Green [4] |
| Hazard warning signal | [3] | Hazard | Control | Yes | — |
| | | — | Telltale [7] | — | — |
| Position, side marker, end-outline marker, identification, or clearance lamps | [3] [8] | Marker Lamps or MK Lps [8] | Control | Yes | — |
| Windshield wiping system | | Wiper or Wipe | Control | Yes | — |
| Windshield washing system | | Washer or Wash | Control | Yes | — |
| Windshield washing and wiping system combined | | Washer-Wiper or Wash-Wipe | Control | Yes | — |
| Windshield defrosting and defogging system | | Defrost, Defog or Def. | Control | Yes | — |
| Rear window defrosting and defogging system | | Rear Defrost, Rear Defog, Rear Def., or R-Def. | Control | Yes | — |

**Table 1**
**Controls, Telltales, and Indicators with Illumination or Color Requirements** [1]

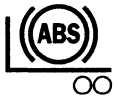
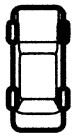
| Column 1 ITEM | Column 2 SYMBOL | Column 3 WORDS OR ABBREVIATIONS | Column 4 FUNCTION | Column 5 ILLUMINATION | Column 6 COLOR |
|---|---|---|---|---|---|
| Brake system malfunction | — | Brake | Telltale | — | Red[4] |
| Antilock brake system malfunction for vehicles subject to FMVSS 105 or 135 | — | Antilock, Anti-lock, or ABS [9] | Telltale | — | Yellow |
| Malfunction in Variable Brake Proportioning System | — | Brake Proportioning [9] | Telltale | — | Yellow |
| Regenerative brake system malfunction | — | RBS or ABS/RBS [9] | Telltale | — | Yellow |
| Malfunction in antilock system for vehicles other than trailers subject to FMVSS 121 | — | ABS or Antilock [9] | Telltale | — | Yellow |
| Antilock brake system trailer fault for vehicles subject to FMVSS 121 |   | Trailer ABS or Trailer Antilock | Telltale | — | Yellow |
| Brake Pressure (for vehicles subject to FMVSS 105 or 135) | — | Brake Pressure [9] | Telltale | — | Red[4] |
| Low brake fluid condition (for vehicles subject to FMVSS 105 or 135) | — | Brake Fluid [9] | Telltale | — | Red[4] |
| Parking brake applied (for vehicles subject to FMVSS 105 or 135) | — | Park or Parking Brake [9] | Telltale | — | Red[4] |
| Brake lining wear-out condition (for vehicles subject to FMVSS 135) | — | Brake Wear [9] | Telltale | — | Red[4] |
| Electronic Stability Control System Malfunction (manufacturer may use this telltale in flashing mode to indicate ESC operation. See FMVSS 126.) | | ESC [10] | Telltale | — | Yellow |
| Electronic Stability Control System "OFF" | | ESC OFF | Control | Yes | — |
| | | | Telltale | — | Yellow |

**Table 1**
**Controls, Telltales, and Indicators with Illumination or Color Requirements** [1]

| Column 1 ITEM | Column 2 SYMBOL | Column 3 WORDS OR ABBREVIATIONS | Column 4 FUNCTION | Column 5 ILLUMINATION | Column 6 COLOR |
|---|---|---|---|---|---|
| Fuel Level | or | Fuel | Telltale | — | — |
| | | | Indicator | Yes | — |
| Engine oil pressure | 11 | Oil | Telltale | — | — |
| | | | Indicator | Yes | — |
| Engine coolant temperature | 11 | Temp | Telltale | — | — |
| | | | Indicator | Yes | — |
| Electrical charge | | Volts or Charge or Amp | Telltale | — | — |
| | | | Indicator | Yes | — |
| Engine stop | — | Engine Stop [12] | Control | Yes | — |
| Automatic vehicle speed (cruise control) | — | — | Control | Yes | — |
| Speedometer | — | MPH, or MPH and km/h [13] | Indicator | Yes | — |
| Heating and Air conditioning system | — | — | Control | Yes | — |
| Automatic transmission control position *(park)* *(reverse)* *(neutral)* *(drive)* | — | P R N D [14] | Indicator | Yes | — |
| Heating and/or air conditioning fan | or | Fan | Control | Yes | — |
| Low Tire Pressure (including malfunction) (See FMVSS 138) | [15] | Low Tire [15] | Telltale | — | Yellow |

**Table 1**
**Controls, Telltales, and Indicators with Illumination or Color Requirements** [1]

| Column 1 ITEM | Column 2 SYMBOL | Column 3 WORDS OR ABBRE-VIATIONS | Column 4 FUNCTION | Column 5 ILLUMIN-ATION | Column 6 COLOR |
|---|---|---|---|---|---|
| Low Tire Pressure (including malfunction) that identifies involved tire (See FMVSS 138) |  [15] | Low Tire [15] | Telltale | — | Yellow |
| Tire Pressure Monitoring System Malfunction (See FMVSS 138) [16] | — | TPMS [15, 17] | Telltale | — | Yellow |

*Notes:*

1. An identifier is shown in this table if it is required for a control for which an illumination requirement exists or if it is used for a telltale for which a color requirement exists. If a line appears in column 2 and column 3, the control, telltale or indicator is required to be identified, however the form of the identification is the manufacturer's option. Telltales are not considered to have an illumination requirement, because by definition the telltale must light when the condition for its activation exists.
2. Additional requirements in FMVSS 108.
3. Framed areas of the symbol may be solid; solid areas may be framed.
4. Blue may be blue-green. Red may be red-orange.
5. Symbols employing four lines instead of five may also be used.
6. The pair of arrows is a single symbol. When the controls or telltales for left and right turn operate independently, however, the two arrows may be considered separate symbols and be spaced accordingly.
7. Not required when arrows of turn signal telltales that otherwise operate independently flash simultaneously as hazard warning telltale.
8. Separate identification not required if function is combined with master lighting switch.
9. Refer to FMVSS 105 or FMVSS 135, as appropriate, for additional specific requirements for brake telltale labeling and color. If a single telltale is used to indicate more than one brake system condition, the brake system malfunction identifier must be used.
10. This symbol may also be used to indicate the malfunction of related systems/functions, including traction control, trailer stability assist, corner brake control, and other similar functions that use throttle and/or individual torque control to operate and share common components with ESC.
11. Combination of the engine oil pressure symbol and the engine coolant temperature symbol in a single telltale is permitted.
12. Use when engine control is separate from the key locking system.
13. If the speedometer is graduated in both miles per hour and in kilometers per hour, the scales must be identified "MPH" and "km/h", respectively, in any combination of upper- and lowercase letters.
14. The letters 'P', 'R', 'N', and 'D' are considered separate identifiers for the individual gear positions. Their locations within the vehicle, and with respect to each other, are governed by FMVSS 102. The letter 'D' may be replaced by another alphanumeric character or symbol chosen by the manufacturer.
15. Required only for FMVSS 138 compliant vehicles.
16. Alternatively, either low tire pressure telltale may be used to indicate a TPMS malfunction. See FMVSS 138.
17. Required only for vehicles manufactured on or after September 1, 2007.

BILLING CODE 4910–59–C

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■ 3. Section 571.126 is added to read as follows:

**§ 571.126 Standard No. 126; Electronic stability control systems.**

S1. *Scope.* This standard establishes performance and equipment requirements for electronic stability control (ESC) systems.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and injuries that result from crashes in which the driver loses directional control of the vehicle, including those resulting in vehicle rollover.

S3. *Application and Incorporation by Reference.*

S3.1 *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, according to the phase-in schedule specified in S8 of this standard.

S3.2 *Incorporation by reference.* ASTM E1337–90 (Reapproved 1996), Standard Test Method for Determining Longitudinal Peak Braking Coefficient of Paved Surfaces Using a STD Reference Test Tire, and ASTM E1136–93 (1993), Standard Specification for a Radial Standard Reference Test Tire, are incorporated by reference in S6.2.2 of this section. The Director of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of ASTM E1337–90 (rev. 1996) and ASTM E1136–93 (1993) may be obtained from the ASTM Web site at *http://www.astm.org*, or by contacting ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Copies of ASTM E1337–90 (Reapproved 1996) and ASTM E1136–93 (1993) may be inspected at NHTSA's Office of Rulemaking, 400 Seventh Street, SW., Washington, DC 20590, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

S4. *Definitions.*

*Ackerman Steer Angle* means the angle whose tangent is the wheelbase divided by the radius of the turn at a very low speed.

*Electronic Stability Control System or ESC System* means a system that has all of the following attributes:

(1) That augments vehicle directional stability by applying and adjusting the vehicle brake torques individually to induce a correcting yaw moment to a vehicle;

(2) That is computer controlled with the computer using a closed-loop algorithm to limit vehicle oversteer and to limit vehicle understeer;

(3) That has a means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time;

(4) That has a means to monitor driver steering inputs;

(5) That has an algorithm to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle, and

(6) That is operational over the full speed range of the vehicle (except at vehicle speeds less than 15 km/h (9.3 mph) or when being driven in reverse).

*Lateral Acceleration* means the component of the vector acceleration of a point in the vehicle perpendicular to the vehicle x axis (longitudinal) and parallel to the road plane.

*Oversteer* means a condition in which the vehicle's yaw rate is greater than the yaw rate that would occur at the vehicle's speed as a result of the Ackerman Steer Angle.

*Sideslip or side slip angle* means the arctangent of the lateral velocity of the center of gravity of the vehicle divided by the longitudinal velocity of the center of gravity.

*Understeer* means a condition in which the vehicle's yaw rate is less than the yaw rate that would occur at the vehicle's speed as result of the Ackerman Steer Angle.

*Yaw rate* means the rate of change of the vehicle's heading angle measured in degrees/second of rotation about a vertical axis through the vehicle's center of gravity.

S5. *Requirements.* Subject to the phase-in set forth in S8, each vehicle must be equipped with an ESC system that meets the requirements specified in S5 under the test conditions specified in S6 and the test procedures specified in S7 of this standard.

S5.1 *Required Equipment.* Vehicles to which this standard applies must be equipped with an electronic stability control system that:

S5.1.1 Is capable of applying brake torques individually to all four wheels and has a control algorithm that utilizes this capability.

S5.1.2 Is operational during all phases of driving including acceleration, coasting, and deceleration (including braking), except when the driver has disabled ESC, the vehicle speed is below 15 km/h (9.3 mph), or the vehicle is being driven in reverse.

S5.1.3 Remains capable of activation even if the antilock brake system or traction control system is also activated.

S5.2 *Performance Requirements.* During each test performed under the test conditions of S6 and the test procedure of S7.9, the vehicle with the ESC system engaged must satisfy the stability criteria of S5.2.1 and S5.2.2, and it must satisfy the responsiveness criterion of S5.2.3 during each of those tests conducted with a commanded steering wheel angle of 5A or greater, where A is the steering wheel angle computed in S7.6.1.

S5.2.1 The yaw rate measured one second after completion of the sine with dwell steering input (time $T_0 + 1$ in Figure 1) must not exceed 35 percent of the first peak value of yaw rate recorded after the steering wheel angle changes sign (between first and second peaks) ($\dot{\psi}_{Peak}$ in Figure 1) during the same test run, and

S5.2.2 The yaw rate measured 1.75 seconds after completion of the sine with dwell steering input must not exceed 20 percent of the first peak value of yaw rate recorded after the steering wheel angle changes sign (between first and second peaks) during the same test run.

S5.2.3 The lateral displacement of the vehicle center of gravity with respect to its initial straight path must be at least 1.83 m (6 feet) for vehicles with a GVWR of 3,500kg (7,716 lb) or less, and 1.52 m (5 feet) for vehicles with a GVWR greater than 3,500 kg (7,716 lb) when computed 1.07 seconds after the Beginning of Steer (BOS). BOS is defined in S7.11.6.

S5.2.3.1 The computation of lateral displacement is performed using double integration with respect to time of the measurement of lateral acceleration at the vehicle center of gravity, as expressed by the formula:

$$\text{Lateral Displacement} = \iint Ay_{C.G.}dt$$

S5.2.3.2 Time t = 0 for the integration operation is the instant of steering initiation, known as the Beginning of Steer (BOS). BOS is defined in S7.11.6.

S5.3 *ESC Malfunction.* The vehicle must be equipped with a telltale that provides a warning to the driver of the occurrence of one or more malfunctions that affect the generation or transmission of control or response signals in the vehicle's electronic stability control system. The ESC malfunction telltale:

S5.3.1 As of September 1, 2011, must be mounted inside the occupant

compartment in front of and in clear view of the driver;

S5.3.2 As of September 1, 2011, must be identified by the symbol shown for ''ESC Malfunction Telltale'' or the specified words or abbreviations listed in Table 1 of Standard No. 101 (49 CFR 571.101);

S5.3.3 Except as provided in paragraph S5.3.4, the ESC malfunction telltale must illuminate only when a malfunction(s) exists and must remain continuously illuminated under the conditions specified in S5.3 for as long as the malfunction(s) exists, whenever the ignition locking system is in the ''On'' (''Run'') position; and

S5.3.4 As of September 1, 2011, except as provided in paragraph S5.3.5, each ESC malfunction telltale must be activated as a check of lamp function either when the ignition locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position.

S5.3.5 The ESC malfunction telltale need not be activated when a starter interlock is in operation.

S5.3.6 The requirement S5.3.4 does not apply to telltales shown in a common space.

S5.3.7 The ESC malfunction telltale must extinguish at the next ignition cycle after the malfunction has been corrected.

S5.3.8 The manufacturer may use the ESC malfunction telltale in a flashing mode to indicate ESC operation.

S5.3.9 Prior to September 1, 2011, a disconnection of the power to the ESC electronic control unit may be indicated by the ABS malfunction telltale instead of the ESC malfunction telltale, and a disconnection of the ''ESC Off'' control need not illuminate the ESC malfunction telltale.

S5.4. *ESC Off and Other System Controls.* The manufacturer may include an ''ESC Off'' control whose only purpose is to place the ESC system in a mode in which it will no longer satisfy the performance requirements of S5.2.1, S5.2.2 and S5.2.3. Manufacturers may also provide controls for other systems that have an ancillary effect upon ESC operation. Controls of either kind that place the ESC system in a mode in which it will no longer satisfy the performance requirements of S5.2.1, S5.2.2 and S5.2.3 are permitted, provided that:

S5.4.1 The vehicle's ESC system must always return to a mode that satisfies the requirements of S5.1 and S5.2 at the initiation of each new ignition cycle, regardless of what mode the driver had previously selected except if that mode is specifically for enhanced traction during low-speed, off-road driving and is entered by the driver using a mechanical control that cannot be automatically reset electrically. If the system has more than one mode that satisfies these requirements, the default mode must be the mode that satisfies the performance requirements of S5.2 by the greatest margin.

S5.4.2 As of September 1, 2011, a control whose only purpose is to place the ESC system in a mode in which it will no longer satisfy the performance requirements of S5.2.1, S5.2.2 and S5.2.3 must be identified by the symbol shown for ''ESC Off'' in Table 1 of Standard No. 101 (49 CFR 571.101) or the text, ''ESC Off'' as listed under ''Word(s) or Abbreviations'' in Table 1 of Standard No. 101 (49 CFR 571.101).

S5.4.3 A control for another system that has the ancillary effect of placing the ESC system in a mode in which it no longer satisfies the performance requirements of S5.2.1, S5.2.2 and S5.2.3 need not be identified by the ''ESC Off'' identifiers in Table 1 of Standard No. 101 (49 CFR 571.101), but the ESC status must be identified by the ''ESC Off'' telltale in accordance with S5.5.

S5.5 *ESC Off Telltale*

S5.5.1 The vehicle manufacturer must provide a telltale indicating that the vehicle has been put into a mode that renders it unable to satisfy the requirements of S5.2.1, S5.2.2 and S5.2.3, if such a mode is provided.

S5.5.2 As of September 1, 2011, the ''ESC Off'' telltale must be identified by the symbol shown for ''ESC Off'' in Table 1 of Standard No. 101 (49 CFR 571.101) or the text, ''ESC Off'' as listed under ''Word(s) or Abbreviations'' in Table 1 of Standard No. 101 (49 CFR 571.101).

S5.5.3 As of September 1, 2011, the ''ESC Off'' telltale must be mounted inside the occupant compartment in front of and in clear view of the driver.

S5.5.4 The ''ESC Off'' telltale must remain continuously illuminated for as long as the ESC is in a mode that renders it unable to satisfy the requirements of S5.2.1, S5.2.2 and S5.2.3, and

S5.5.5 Notwithstanding S5.3.1(e) of 49 CFR 571.101, the vehicle manufacturer may use the ''ESC Off'' telltale to indicate an ESC level of function other than the fully functional default mode even if the vehicle would meet S5.2.1, S5.2.2 and S5.2.3 at that level of ESC function.

S5.5.6 As of September 1, 2011, except as provided in paragraph S5.5.7 and S5.5.8, each ''ESC Off'' telltale must be activated as a check of lamp function either when the ignition locking system is turned to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position.

S5.5.7 The ''ESC Off'' telltale need not be activated when a starter interlock is in operation.

S5.5.8 The requirement S5.5.6 does not apply to telltales shown in a common space.

S5.5.9 The ''ESC Off'' telltale must extinguish after the ESC system has been returned to its fully functional default mode.

S5.6 *ESC System Technical Documentation.* To ensure a vehicle is equipped with an ESC system that meets the definition of ''ESC System'' in S4, the vehicle manufacturer must make available to the agency, upon request, the following documentation:

S5.6.1 A system diagram that identifies all ESC system hardware. The diagram must identify what components are used to generate brake torques at each wheel, determine vehicle yaw rate, estimated side slip or the side slip derivative and driver steering inputs.

S5.6.2 A written explanation describing the ESC system basic operational characteristics. This explanation must include a discussion on the system's capability to apply brake torques at each wheel and how the system modifies engine torque during ESC system activation. The explanation must also identify the vehicle speed range and the driving phases (acceleration, deceleration, coasting, during activation of the ABS or traction control) under which the ESC system can activate.

S5.6.3 A logic diagram that supports the explanation provided in S5.6.2.

S5.6.4 Specifically for mitigating vehicle understeer, a discussion of the pertinent inputs to the computer or calculations within the computer and how its algorithm uses that information and controls ESC system hardware to limit vehicle understeer.

S6. *Test Conditions.*

S6.1 *Ambient conditions.*

S6.1.1 The ambient temperature is between 7 °C (45 °F) and 40 °C (104 °F).

S6.1.2 The maximum wind speed is no greater than 10 m/s (22 mph) for passenger cars and 5 m/s (11 mph) for multipurpose passenger vehicles, trucks and buses.

S6.2 *Road test surface.*

S6.2.1 The tests are conducted on a dry, uniform, solid-paved surface. Surfaces with irregularities and undulations, such as dips and large cracks, are unsuitable.

S6.2.2 The road test surface must produce a peak friction coefficient (PFC) of 0.9 when measured using an American Society for Testing and Materials (ASTM) E1136–93 (1993) standard reference test tire, in accordance with ASTM Method E 1337–90 (Reapproved 1996), at a speed of 64.4 km/h (40 mph), without water delivery. (These standards are here incorporated by reference as explained in S3.2 above.)

S6.2.3 The test surface has a consistent slope between level and 1%.

S6.3 *Vehicle conditions.*

S6.3.1 The ESC system is enabled for all testing.

S6.3.2 *Test Weight.* The vehicle is loaded with the fuel tank filled to at least 75 percent of capacity, and total interior load of 168 kg (370 lbs) comprised of the test driver, approximately 59 kg (130 lbs) of test equipment (automated steering machine, data acquisition system and the power supply for the steering machine), and ballast as required by differences in the weight of test drivers and test equipment. Where required, ballast shall be placed on the floor behind the passenger front seat or if necessary in the front passenger foot well area. All ballast shall be secured in a way that prevents it from becoming dislodged during test conduct.

S6.3.3 *Tires.* The vehicle is tested with the tires installed on the vehicle at time of initial vehicle sale. The tires are inflated to the vehicle manufacturer's recommended cold tire inflation pressure(s) specified on the vehicle's placard or the tire inflation pressure label. Tubes may be installed to prevent tire de-beading.

S6.3.4 *Outriggers.* Outriggers must be used for testing trucks, multipurpose passenger vehicles, and buses. Vehicles with a baseline weight under 2,722 kg (6,000 lbs) must be equipped with ''standard'' outriggers and vehicles with a baseline weight equal to or greater than 2,722 kg (6,000 lbs) must be equipped with ''heavy'' outriggers. A vehicle's baseline weight is the weight of the vehicle delivered from the dealer, fully fueled, with a 73 kg (160 lb) driver. Standard outriggers shall be designed with a maximum weight of 32 kg (70 lb) and a maximum roll moment of inertia of 35.9 kg-m$^2$ (26.5 ft-lb-sec$^2$). Heavy outriggers shall be designed with a maximum weight of 39 kg (86 lb) and a maximum roll moment of inertia of 40.7 kg-m$^2$ (30.0 ft-lb-sec$^2$).

S6.3.5 *Automated steering machine.* A steering machine programmed to execute the required steering pattern must be used in S7.5.2, S7.5.3, S7.6 and S7.9. The steering machine shall be capable of supplying steering torques between 40 to 60 Nm (29.5 to 44.3 lb-ft). The steering machine must be able to apply these torques when operating with steering wheel velocities up to 1200 degrees per second.

S7. *Test Procedure.*

S7.1 Inflate the vehicles' tires to the cold tire inflation pressure(s) provided on the vehicle's placard or the tire inflation pressure label.

S7.2 *Telltale bulb check.* With the vehicle stationary and the ignition locking system in the ''Lock'' or ''Off'' position, activate the ignition locking system to the ''On'' (''Run'') position or, where applicable, the appropriate position for the lamp check. The ESC malfunction telltale must be activated as a check of lamp function, as specified in S5.3.4, and if equipped, the ''ESC Off'' telltale must also be activated as a check of lamp function, as specified in S5.5.6. The telltale bulb check is not required for a telltale shown in a common space as specified in S5.3.6 and S5.5.8.

S7.3 *''ESC Off'' control check.* For vehicles equipped with an ''ESC Off'' control, with the vehicle stationary and the ignition locking system in the ''Lock'' or ''Off'' position, activate the ignition locking system to the ''On'' (''Run'') position. Activate the ''ESC Off'' control and verify that the ''ESC Off'' telltale is illuminated, as specified in S5.5.4. Turn the ignition locking system to the ''Lock'' or ''Off'' position. Again, activate the ignition locking system to the ''On'' (''Run'') position and verify that the ''ESC Off'' telltale has extinguished indicating that the ESC system has been reactivated as specified in S5.4.1.

S7.4 *Brake Conditioning.* Condition the vehicle brakes as follows:

S7.4.1 Ten stops are performed from a speed of 56 km/h (35 mph), with an average deceleration of approximately 0.5 g.

S7.4.2 Immediately following the series of 56 km/h (35 mph) stops, three additional stops are performed from 72 km/h (45 mph).

S7.4.3 When executing the stops in S7.4.2, sufficient force is applied to the brake pedal to activate the vehicle's antilock brake system (ABS) for a majority of each braking event.

S7.4.4 Following completion of the final stop in S7.4.2, the vehicle is driven at a speed of 72 km/h (45 mph) for five minutes to cool the brakes.

S7.5 *Tire Conditioning.* Condition the tires using the following procedure to wear away mold sheen and achieve operating temperature immediately before beginning the test runs of S7.6 and S7.9.

S7.5.1 The test vehicle is driven around a circle 30 meters (100 feet) in diameter at a speed that produces a lateral acceleration of approximately 0.5 to 0.6 g for three clockwise laps followed by three counterclockwise laps.

S7.5.2 Using a sinusoidal steering pattern at a frequency of 1 Hz, a peak steering wheel angle amplitude corresponding to a peak lateral acceleration of 0.5–0.6 g, and a vehicle speed of 56 km/h (35 mph), the vehicle is driven through four passes performing 10 cycles of sinusoidal steering during each pass.

S7.5.3 The steering wheel angle amplitude of the final cycle of the final pass is twice that of the other cycles. The maximum time permitted between all laps and passes is five minutes.

S7.6 *Slowly Increasing Steer Test.* The vehicle is subjected to two series of runs of the Slowly Increasing Steer Test using a constant vehicle speed of 80 ± 2 km/h (50 ± 1 mph) and a steering pattern that increases by 13.5 degrees per second until a lateral acceleration of approximately 0.5 g is obtained. Three repetitions are performed for each test series. One series uses counterclockwise steering, and the other series uses clockwise steering. The maximum time permitted between each test run is five minutes.

S7.6.1 From the Slowly Increasing Steer tests, the quantity ''A'' is determined. ''A'' is the steering wheel angle in degrees that produces a steady state lateral acceleration (corrected using the methods specified in S7.11.3) of 0.3 g for the test vehicle. Utilizing linear regression, A is calculated, to the nearest 0.1 degrees, from each of the six Slowly Increasing Steer tests. The absolute value of the six A's calculated is averaged and rounded to the nearest 0.1 degrees to produce the final quantity, A, used below.

S7.7 After the quantity A has been determined, without replacing the tires, the tire conditioning procedure described in S7.5 is performed immediately prior to conducting the Sine with Dwell Test of S7.9. Initiation of the first Sine with Dwell test series shall begin within two hours after completion of the Slowly Increasing Steer tests of S7.6.

S7.8 Check that the ESC system is enabled by ensuring that the ESC malfunction and ''ESC Off'' (if provided) telltales are not illuminated.

S7.9 *Sine with Dwell Test of Oversteer Intervention and*

*Responsiveness.* The vehicle is subjected to two series of test runs using a steering pattern of a sine wave at 0.7 Hz frequency with a 500 ms delay beginning at the second peak amplitude as shown in Figure 2 (the Sine with Dwell tests). One series uses counterclockwise steering for the first half cycle, and the other series uses clockwise steering for the first half cycle. The vehicle is provided a cool-down period between each test run of 90 seconds to five minutes, with the vehicle stationary.

S7.9.1 The steering motion is initiated with the vehicle coasting in high gear at 80 ±2 km/h (50 ±1 mph).

S7.9.2 In each series of test runs, the steering amplitude is increased from run to run, by 0.5A, provided that no such run will result in a steering amplitude greater than that of the final run specified in S7.9.4.

S7.9.3 The steering amplitude for the initial run of each series is 1.5A where A is the steering wheel angle determined in S7.6.1.

S7.9.4 The steering amplitude of the final run in each series is the greater of 6.5A or 270 degrees, provided the calculated magnitude of 6.5A is less than or equal to 300 degrees. If any 0.5A increment, up to 6.5A, is greater than 300 degrees, the steering amplitude of the final run shall be 300 degrees.

S7.9.5 Upon completion of the two series of test runs, post processing of yaw rate and lateral acceleration data is done as specified in S7.11.

S7.10 *ESC Malfunction Detection.*

S7.10.1 Simulate one or more ESC malfunction(s) by disconnecting the power source to any ESC component, or disconnecting any electrical connection between ESC components (with the vehicle power off). When simulating an ESC malfunction, the electrical connections for the telltale lamp(s) are not to be disconnected.

S7.10.2 With the vehicle initially stationary and the ignition locking system in the ''Lock'' or ''Off'' position, activate the ignition locking system to the ''Start'' position and start the engine. Place the vehicle in a forward gear and obtain a vehicle speed of 48 ± 8 km/h (30 ± 5 mph). Drive the vehicle for at least two minutes including at least one left and one right turning maneuver. Verify that within two minutes of obtaining this vehicle speed the ESC malfunction indicator illuminates in accordance with S5.3.

S7.10.3 Stop the vehicle, deactivate the ignition locking system to the ''Off'' or ''Lock'' position. After a five-minute period, activate the vehicle's ignition locking system to the ''Start'' position and start the engine. Verify that the ESC malfunction indicator again illuminates to signal a malfunction and remains illuminated as long as the engine is running or until the fault is corrected.

S7.10.4 Deactivate the ignition locking system to the ''Off'' or ''Lock'' position. Restore the ESC system to normal operation, activate the ignition system to the ''Start'' position and start the engine. Verify that the telltale has extinguished.

S7.11 *Post Data Processing—Calculations for Performance Metrics.* Yaw rate and lateral displacement measurements and calculations must be processed utilizing the following techniques:

S7.11.1 Raw steering wheel angle data is filtered with a 12-pole phaseless Butterworth filter and a cutoff frequency of 10Hz. The filtered data is then zeroed to remove sensor offset utilizing static pretest data.

S7.11.2 Raw yaw rate data is filtered with a 12-pole phaseless Butterworth filter and a cutoff frequency of 6Hz. The filtered data is then zeroed to remove sensor offset utilizing static pretest data.

S7.11.3 Raw lateral acceleration data is filtered with a 12-pole phaseless Butterworth filter and a cutoff frequency of 6Hz. The filtered data is then zeroed to remove sensor offset utilizing static pretest data. The lateral acceleration data at the vehicle center of gravity is determined by removing the effects caused by vehicle body roll and by correcting for sensor placement via use of coordinate transformation. For data collection, the lateral accelerometer shall be located as close as possible to the position of the vehicle's longitudinal and lateral centers of gravity.

S7.11.4 Steering wheel velocity is determined by differentiating the filtered steering wheel angle data. The steering wheel velocity data is then filtered with a moving 0.1 second running average filter.

S7.11.5 Lateral acceleration, yaw rate and steering wheel angle data channels are zeroed utilizing a defined ''zeroing range.'' The methods used to establish the zeroing range are defined in S7.11.5.1 and S7.11.5.2.

S7.11.5.1 Using the steering wheel rate data calculated using the methods described in S7.11.4, the first instant steering wheel rate exceeds 75 deg/sec is identified. From this point, steering wheel rate must remain greater than 75 deg/sec for at least 200 ms. If the second condition is not met, the next instant steering wheel rate exceeds 75 deg/sec is identified and the 200 ms validity check applied. This iterative process continues until both conditions are ultimately satisfied.

S7.11.5.2 The ''zeroing range'' is defined as the 1.0 second time period prior to the instant the steering wheel rate exceeds 75 deg/sec (*i.e.*, the instant the steering wheel velocity exceeds 75 deg/sec defines the end of the ''zeroing range'').

S7.11.6 The Beginning of Steer (BOS) is defined as the first instance filtered and zeroed steering wheel angle data reaches −5 degrees (when the initial steering input is counterclockwise) or +5 degrees (when the initial steering input is clockwise) after time defining the end of the ''zeroing range.'' The value for time at the BOS is interpolated.

S7.11.7 The Completion of Steer (COS) is defined as the time the steering wheel angle returns to zero at the completion of the Sine with Dwell steering maneuver. The value for time at the zero degree steering wheel angle is interpolated.

S7.11.8 The second peak yaw rate is defined as the first local yaw rate peak produced by the reversal of the steering wheel. The yaw rates at 1.000 and 1.750 seconds after COS are determined by interpolation.

S7.11.9 Determine lateral velocity by integrating corrected, filtered and zeroed lateral acceleration data. Zero lateral velocity at BOS event. Determine lateral displacement by integrating zeroed lateral velocity. Zero lateral displacement at BOS event. Lateral displacement at 1.07 seconds from BOS event is determined by interpolation.

S8. Phase-in schedule.

S8.1 *Vehicles manufactured on or after September 1, 2008, and before September 1, 2009.* For vehicles manufactured on or after September 1, 2008, and before September 1, 2009, the number of vehicles complying with this standard must not be less than 55 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2005, and before September 1, 2008; or

(b) The manufacturer's production on or after September 1, 2008, and before September 1, 2009.

S8.2 *Vehicles manufactured on or after September 1, 2009, and before September 1, 2010.* For vehicles manufactured on or after September 1, 2009, and before September 1, 2010, the number of vehicles complying with this standard must not be less than 75 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2006, and before September 1, 2009; or

(b) The manufacturer's production on or after September 1, 2009, and before September 1, 2010.

S8.3 *Vehicles manufactured on or after September 1, 2010, and before September 1, 2011.* For vehicles manufactured on or after September 1, 2010, and before September 1, 2011, the number of vehicles complying with this standard must not be less than 95 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2007, and before September 1, 2010; or

(b) The manufacturer's production on or after September 1, 2010, and before September 1, 2011.

S8.4 *Vehicles manufactured on or after September 1, 2011.* All vehicles manufactured on or after September 1, 2011 must comply with this standard.

S8.5 *Calculation of complying vehicles.*

(a) For purposes of complying with S8.1, a manufacturer may count a vehicle if it is certified as complying with this standard and is manufactured on or after June 5, 2007, but before September 1, 2009.

(b) For purpose of complying with S8.2, a manufacturer may count a vehicle if it:

(1) (i) Is certified as complying with this standard and is manufactured on or after June 5, 2007, but before September 1, 2010; and

(ii) Is not counted toward compliance with S8.1; or

(2) Is manufactured on or after September 1, 2009, but before September 1, 2010.

(c) For purposes of complying with S8.3, a manufacturer may count a vehicle if it:

(1)(i) Is certified as complying with this standard and is manufactured on or after June 5, 2007, but before September 1, 2011; and

(ii) Is not counted toward compliance with S8.1 or S8.2; or

(2) Is manufactured on or after September 1, 2010, but before September 1, 2011.

S8.6 *Vehicles produced by more than one manufacturer.*

S8.6.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S8.1 through S8.4, a vehicle produced by more than one manufacturer must be attributed to a single manufacturer as follows, subject to S8.6.2:

(a) A vehicle that is imported must be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, must be attributed to the manufacturer that markets the vehicle.

S8.6.2 A vehicle produced by more than one manufacturer must be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S8.6.1.

S8.7 *Small volume manufacturers.*

Vehicles manufactured during any of the three years of the September 1, 2008 through August 31, 2011 phase-in by a manufacturer that produces fewer than 5,000 vehicles for sale in the United States during that year are not subject to the requirements of S8.1, S8.2, S8.3, and S8.5.

S8.8 *Final-stage manufacturers and alterers.*

Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S8.1 through S8.5. Instead, all vehicles produced by these manufacturers on or after September 1, 2012 must comply with this standard.

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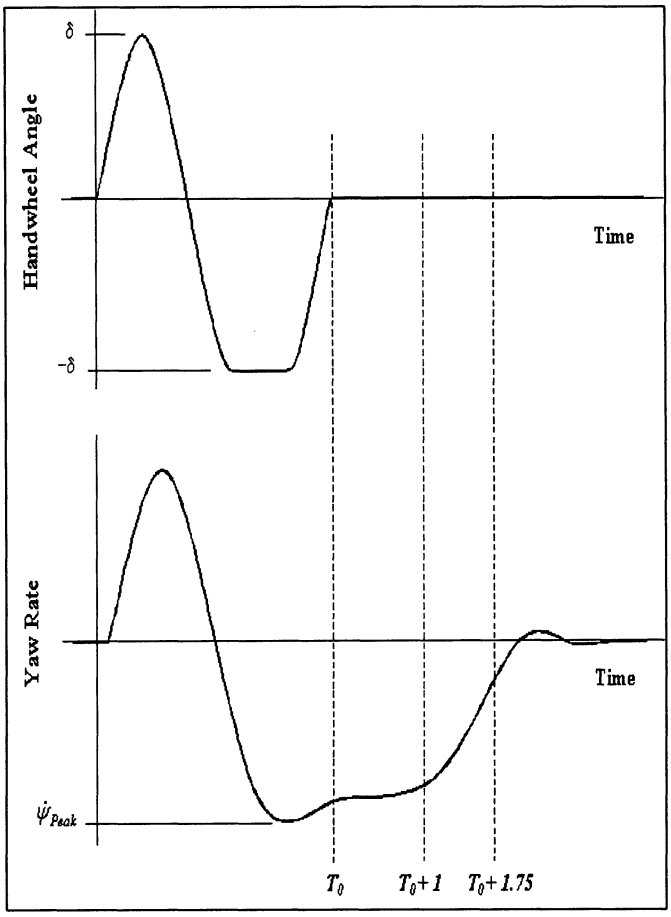



**Figure 1.** Steering wheel position and yaw velocity information used to assess lateral stability.

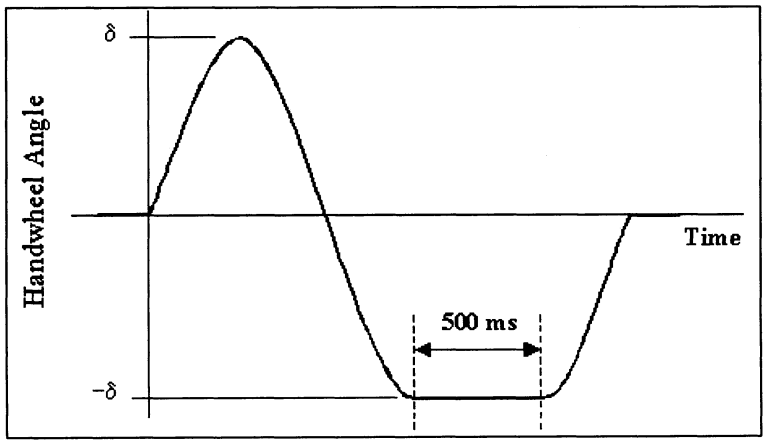



**Figure 2.** Sine with Dwell steering profile.

## PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 4. The authority citation for part 585 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 5. Subpart H is added and reserved.

■ 6. Subpart I is added to read as follows:

### Subpart I—Electronic Stability Control System Phase-In Reporting Requirements

Sec.
585.81 Scope.
585.82 Purpose.
585.83 Applicability.
585.84 Definitions.
585.85 Response to inquiries.
585.86 Reporting requirements.
585.87 Records.
585.88 Petition to extend period to file report.

## Subpart I—Electronic Stability Control System Phase In Reporting Requirements

### § 585.81 Scope.

This subpart establishes requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the requirements of Standard No. 126, *Electronic stability control systems* (49 CFR 571.126).

### § 585.82 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 126 (49 CFR 571.126).

### § 585.83 Applicability.

This subpart applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less. However, this subpart does not apply to manufacturers whose production consists exclusively of vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter. In addition, this subpart does not apply to manufacturers whose production of motor vehicles for the United States market is less than 5,000 vehicles in a production year.

### § 585.84 Definitions.

For the purposes of this subpart:

*Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

### § 585.85 Response to inquiries.

At any time prior to August 31, 2011, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that have been certified as complying with Standard No. 126 (49 CFR 571.126). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable. Upon request, the manufacturer also must specify whether it intends to utilize carry-forward credits, and the vehicles to which those credits relate.

### § 585.86 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2009, August 31, 2010, and August 31, 2011, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 126 (49 CFR 571.126) for its passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of less than 4,536 kilograms (10,000 pounds) produced in that year.

Each report must—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the requirements of Standard No. 126 (49 CFR 571.126) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content.*

(1) *Basis for statement of compliance.* Each manufacturer must provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer must report for the production year for which the report is filed: the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less that meet Standard No. 126 (49 CFR 571.126).

(3) *Statement regarding compliance.* Each manufacturer must provide a statement regarding whether or not the manufacturer complied with the ESC requirements as applicable to the period covered by the report, and the basis for that statement. This statement must include an explanation concerning the use of any carry-forward credits.

(4) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S8.6.2 of Standard No. 126 (49 CFR 571.126) must:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

### § 585.87 Records.

Each manufacturer must maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.86(b)(2) until December 31, 2013.

### § 585.88 Petition to extend period to file report.

A manufacturer may petition for extension of time to submit a report under this Part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 585.86(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issued: March 22, 2007.

**Nicole R. Nason,**

*Administrator.*

[**Note:** The Following Appendix Will Not Appear in the Code of Federal Regulations.]

## APPENDIX: Technical Explanation in Response to Comments on Understeer

This appendix explains NHTSA's reasoning regarding the issue raised by public comment on *Understeer Requirements,* as discussed in the Response to Comments section of the Final Rule (*see* Section IV.C.4). This is an area of ongoing research by vehicle dynamics researchers involving concepts that are beyond what is usually discussed in a first-year graduate-school-level course on vehicle dynamics. We have done our best to address this subject in a way that will be easily understandable by the general reader. Nevertheless, some aspects of the following discussion are unavoidably fairly technical.

### Explanation of Linear and Non-Linear Understeer

First, we wish to clarify what we mean by linear and non-linear range understeer since some of the commenters did not appear to understand the fundamental issues associated with the agency's decision to include an understeer requirement in the definition of ESC System.

Understeer has proven to be an extremely useful concept for characterizing the lateral response of a vehicle. Section III.A, *How ESC Prevents Loss of Vehicle Control*[93] of the Notice of Proposed Rulemaking (NPRM) attempts to explain the concepts of understeer and oversteer to the reader in non-technical terms. However, the full scientific definitions of understeer and oversteer are presented here in order to lay the technical groundwork for the discussions that follow.

Many alternative definitions of understeer have been developed. The Society of Automotive Engineers' (SAE) definitions of understeer and its opposite, oversteer, taken from SAE J670e,[94] are:

''9.4.7 UNDERSTEER/OVERSTEER GRADIENT—The ratio of the *steering wheel angle gradient* to the *overall steering ratio* quantity obtained by subtracting the *Ackerman steer angle gradient* from the ratio of the *steering wheel angle gradient* to the *overall steering ratio.*''

''9.4.9 UNDERSTEER—A vehicle is understeer at a given *trim*[95] if the ratio of the *steering wheel angle gradient* to the *overall steering ratio* is greater than the *Ackerman steer angle gradient.*''

''9.4.10 OVERSTEER—A vehicle is oversteer at a given *trim* if the ratio of the *steering wheel angle gradient* to the *overall steering ratio* is less than the *Ackerman steer angle gradient.*''

SAE J670e defines ''steering wheel angle gradient'' and ''Ackerman steer angle gradient'' as follows:

''9.4.5 STEERING WHEEL ANGLE GRADIENT—The rate of change in the *steering wheel angle* with respect to change in steady state lateral acceleration on a level road at a given *trim* and test conditions.''

''Note 14 ACKERMAN STEER ANGLE GRADIENT is equal to the wheelbase divided by the square of the vehicle speed (rad/ft/sec$^2$).''

Consider the linear range of vehicle handling. The linear range is defined as the region of handling where the lateral acceleration versus steering wheel angle gain remains approximately constant (meaning that the understeer gradient is essentially constant).[96] The boundaries of the linear range depend upon the friction of the surface being driven on. The linear range occurs for lateral accelerations between 0.1 and 0.4g on a high friction surface such as dry asphalt or concrete. For a slippery, moderately low friction surface such as a wet road, the linear range would be lower, perhaps between lateral accelerations of 0.05 and 0.2g (depending upon the surface of the road), while on ice the limits of the linear range would be still lower.

All light vehicles (including passenger cars, pickups, vans, minivans, crossovers, and sport utility vehicles) are designed to understeer in the linear range of lateral acceleration, although operational factors such as loading, tire inflation pressure, and so forth can in rare situations make them oversteer in use. This is a fundamental design characteristic. Understeer provides a valuable, and benign, way for the vehicle to inform the driver of how the available roadway friction is being utilized. Multiple tests have been developed to objectively quantify linear-range understeer, including SAE J266 and ISO 4138.

In the linear range of handling, ESC should never activate. ESC interventions occur when the driver's intended path (calculated by the ESC control algorithms using a constant linear range understeer gradient) differs from the actual path of the vehicle as measured by ESC sensors. Since by definition, this relationship is not violated while driving in the linear range, ESC intervention will not occur. Therefore, ESC has no effect upon the linear-range understeer of a vehicle.

Solving the linear range differential equations of motion for what the Millikens[97] refer to as the ''Elementary Automobile'' or ''bicycle'' model reveals that the understeer gradient has some very interesting mathematical properties.

First, the solutions to the linear range differential equations of motion are unconditionally stable[98] provided that the understeer gradient is positive (*i.e.*, the vehicle is understeer). For an oversteer vehicle,[99] solutions to the linear range differential equations of motion become unstable if the vehicle's speed exceeds the critical speed. The value of the critical speed depends upon the degree of oversteer the vehicle exhibits (and on other vehicle properties); however, a vehicle with reasonable amounts of oversteer can easily exceed the critical speed and become unstable during normal driving.

What does it mean when the solutions to the linear range differential equations of motion become unstable? It means that as soon as the unstable vehicle encounters a disturbance input (and in real driving, disturbance inputs such as small wind gusts or small bumps in the road occur very frequently), the actual solutions of the differential equation will rapidly diverge from the nominal solutions. In the real world, this means that the driver can no longer control the unstable vehicle by using the steering wheel. The unstable vehicle generally will rotate rapidly about a vertical axis (spin) and may change its direction of motion regardless of what the driver does with the steering wheel. From the safety point of view, a vehicle becoming unstable often has severe negative consequences, ranging from road departure to sideways impacts with off-road obstacles to tripped rollover.

Returning to the mathematical properties of the understeer gradient, we find that it also is a key parameter in determining the lateral responsiveness[100] of the vehicle. According to the solutions to the linear range differential equations of motion, the more a vehicle understeers, the less lateral responsiveness it will have (assuming, of course, that all other parameters are held constant).

For a vehicle to be safe, it must have adequate lateral responsiveness. Vehicles with too little lateral responsiveness will not be able to successfully maneuver around pedestrians, vehicles, or other objects that

[93] 71 FR 54712, 54716–54718 (Sept. 18, 2006).

[94] SAE J670e, ''Vehicle Dynamics Terminology,'' SAE Recommended Practice, Issued by the SAE Vehicle Dynamics Committee July 1952, last revised July 1976.

[95] For the reader's reference, ''trim'' is roughly defined as the vehicle's weight distribution at a given time. For example, loading the vehicle's trunk changes the trim.

[96] A less technical way of describing ''linear range'' would be the normal situation of everyday driving, where a given turn by the driver of the steering wheel causes an expected amount of turn of the vehicle itself, because the vehicle is operating at the traction levels to which most drivers are accustomed.

[97] Milliken, W.F., and Milliken, D.L., p. 144, ''Race Car Vehicle Dynamics,'' SAE International, 1995

[98] ''Unconditionally stable'' for a motor vehicle means that, regardless of the weight distribution, suspension configuration, tire cornering stiffness, or vehicle speed (provided the vehicle can be modeled by the Elementary Automobile or ''bicycle'' model), the vehicle will return to straight ahead driving after enough time (usually only a couple of seconds) has passed after the return of the steering wheel to the straight ahead position.

[99] A simple test illustrates the concepts of understeer and oversteer. A vehicle is driven around a circle at a constant speed, then the speed is slowly increased. If the vehicle tends to go off the outside of the circle so that the driver must increase steering to maintain the circle, then the vehicle is considered to be an understeer vehicle. If the vehicle tends to go off the inside of the circle so that the driver must reduce steering to maintain the circle, then the vehicle is considered to be an oversteer vehicle. Understeer and oversteer can affect the stability of a vehicle; however, just because a vehicle is an oversteer vehicle does not mean that it is uncontrollable. A more detailed discussion of understeer and oversteer and their impact on stability and control is contained in (a) William F. Milliken and Douglas L. Milliken, ''Simplified Steady State Stability and Control,'' Chapter 5, and ''Simplified Transient Stability and Control,'' Chapter 6 in *Race Car Vehicle Dynamics* (Warrendale, PA: Society of Automotive Engineers, 1995) 123–229 and 231–277; and (b) Thomas D. Gillespie, ''Rollover,'' Chapter 9 in *Fundamentals of Vehicle Dynamics* (Warrendale, PA: Society of Automotive Engineers, 1992) 309–333.

[100] Lateral responsiveness is defined here as how much a vehicle moves sideways in a given amount of time due to a specified rotation of the steering wheel.

may suddenly intrude into the roadway. They will also be more difficult to steer around turns in the road, requiring the driver to initiate steering earlier than for vehicles with adequate lateral responsiveness.

A safe vehicle, then, requires both stability and adequate lateral responsiveness. In the linear range of handling, this is achieved by having the vehicle understeer to a moderate degree. This explains why all light vehicles are designed to understeer in the linear range of lateral acceleration.

Next, consider driving situations that are outside of the linear range of handling. In this situation, the differential equations of motion, even for the ''Elementary Automobile'' or ''bicycle'' model become non-linear, complicated, and beyond the ability of humans to solve analytically. Vehicle dynamics simulations have been developed that use numerical integration to predict the vehicle trajectories. Unfortunately, the prediction of vehicle trajectories is insufficient to determine the stability of the vehicle, although it can be used to determine the lateral responsiveness of the vehicle.

To determine the stability of the solutions of the non-linear range differential equations of motion, the ''Method of Liapunov'' [101] is used. The Method of Liapunov consists of linearizing the non-linear differential equations about an operating point of the vehicle. Liapunov proved that the stability of the solutions of the linearized differential equations about an operating point is the same as the stability of the original non-linear differential equations about that same operating point. The term that determines the stability of the solutions of the linearized differential equations about an operating point is called the non-linear understeer gradient. However, unlike the linear understeer gradient, the non-linear understeer gradient is no longer constant. It will vary as a function of the vehicle's lateral acceleration.

Just as is the case for the linear range vehicle, for a vehicle to be safe at an operating point in the non-linear range, we must have both stability and adequate lateral responsiveness. Again, this is achieved by designing the vehicle to understeer to a moderate degree. However, for reasons that are explained below, it is impossible to attain this desirable condition over the entire non-linear operating range of the vehicle.

**What NHTSA Means by Mitigating Excessive Understeer**

All motor vehicles are limited as to how sharply they can turn. This fact has important implications for the non-linear understeer/oversteer of vehicles.

The behavior of a vehicle when turning as sharply as possible is referred to as the limit behavior of the vehicle. For vehicles with four wheels and two axles, there are exactly four possible limit behaviors. Each of these cases, and its implications for limit understeer/oversteer are discussed below.

*Case 1—The vehicle plows out.* For this case, how sharply the vehicle can turn is limited by the friction between the roadway and the tires on the vehicle's front axle. When the tires on the vehicle's front axle are producing as much side force as the road/tire friction permits, we say that the vehicle's front tires are saturated. When the front tires saturate before the rear tires, the vehicle continues to travel forward in as tight a curve as it can manage. The turn will not become tighter, even if the driver turns the steering wheel requesting a sharper turn. We call this behavior vehicle plow-out. While from a safety point of view it is never good for a vehicle to reach limit behavior, plow-out is the most benign form of limit behavior. Mathematically, plow-out corresponds to the non-linear understeer gradient remaining positive and becoming infinite at the limit of handling.

*Case 2—The vehicle drifts out.* For this case, the tires on both the vehicle's front and rear axles saturate at exactly the same time. Drift-out is extremely rare; it is very hard to saturate both axles at the same time. When drift-out occurs, the vehicle continues to travel forward in as tight a curve as it can manage (similar to plow-out) except that the vehicle will slowly (far more slowly than for Case 3, below) rotate about its vertical axis. Due to this slow rotation of the vehicle, from a safety point of view drift-out is not as benign as plow-out but it is better than spin-out (Case 3, below). Mathematically, drift-out corresponds to the non-linear understeer gradient remaining positive and becoming infinite at the limit of handling.

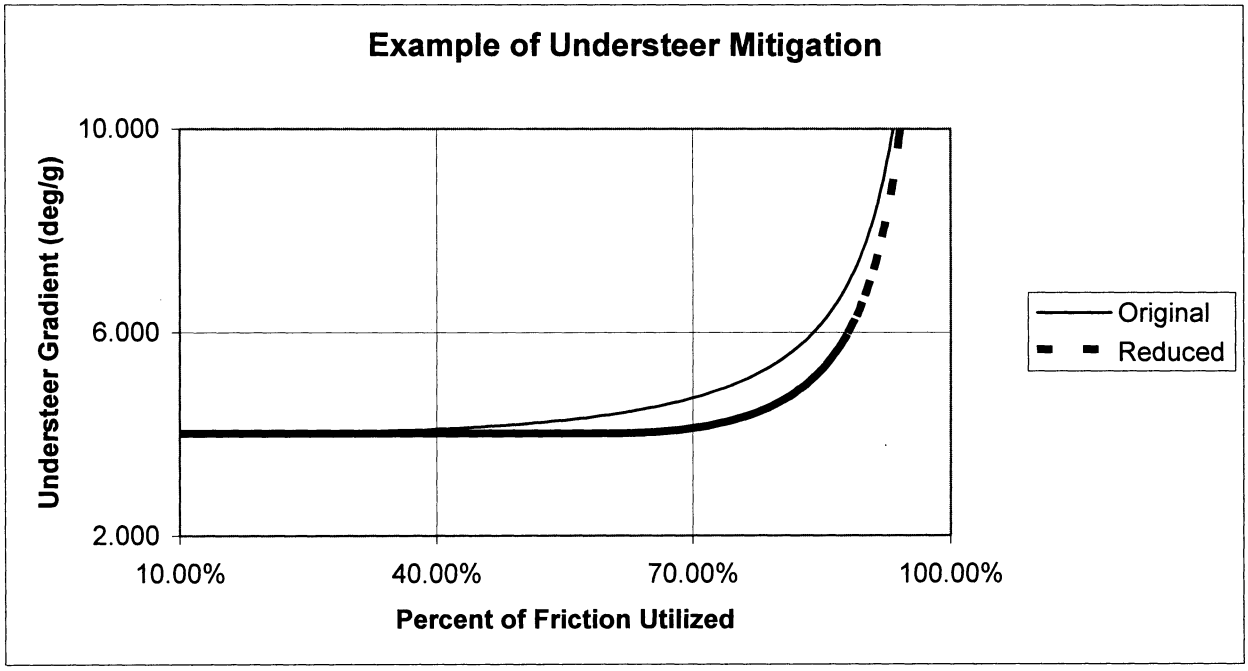
*Case 3—The vehicle spins out.* For this case, the tires on the vehicle's rear axle saturate first. When spin-out occurs, the vehicle continues to travel forwards in a curve while the rear of the vehicle rapidly rotates about its vertical axis. From the safety point of view, vehicle spin-out is very bad with negative consequences ranging from road departure to sideways impacts with off-road obstacles to tripped rollover. Mathematically, spin-out corresponds to the non-linear understeer gradient becoming negative and infinite (*i.e.*, the vehicle oversteers to an extreme degree) at the limit of handling.

*Case 4—The vehicle rolls over.* For this case, the tires on the vehicle's front and rear axles do not reach saturation. Instead, before the friction limit is reached, the vehicle's tires leave the roadway and the vehicle rotates rapidly about its longitudinal axis onto its side or roof. From the safety point of view, vehicle rollover is the worst type of limit behavior. It is also the only type of limit behavior in which the vehicle's behavior at the limit does not determine the non-linear understeer gradient at the limit of handling. Either understeer or oversteer, and by any amount, is possible for this case.

Summarizing the above cases, at the limit of handling a vehicle's understeer gradient will either be positive and infinite (plow-out and drift-out), negative and infinite (spin-out), or not determined (rollover). While both spin-out and rollover are major safety concerns, this discussion is concerned with mitigating excessive understeer. Therefore, in the following discussion, we will only deal with the case in which a vehicle's understeer gradient is positive and infinite at the limit of handling. Vehicles that behave in this manner are called ''terminally understeering.''

A terminally understeering vehicle's understeer gradient will then be a positive constant in its linear range and positive and infinite at the limit of handling. Between the upper limit of the linear handling range and the limit of handling, the non-linear understeer gradient will be positive and monotonically increasing. (Vehicles with local maxima in their non-linear understeer gradient usually become terminally oversteer although we are not aware of any proofs that this must occur.) Figure 1 shows a typical understeer gradient curve for a hypothetical vehicle without ESC (the curve marked ''Original''). The goal of mitigating excessive understeer is to use the ESC to reduce the non-linear understeer gradient over the range from 40 to 95 percent friction utilization to closer to the linear range understeer gradient. The curve marked ''Reduced'' in Figure 1 shows a hypothetical example of mitigation of excessive understeer.

[101] Birkhoff, G. and Rota, G.C., pp 134–136, ''Ordinary Differential Equations,'' Blaisdell Publishing Company, 1969.




**Need for Care in Mitigating Excessive Understeer**

Conceptually, the idea of ESC understeer mitigation makes good physical sense. In a situation where the vehicle does not sufficiently respond to the driver's steering input (*e.g.*, ''plowing'' when the driver attempts to steer around a corner), the automatic application of single-wheel braking torque to reduce understeer and increase the vehicle's lateral responsiveness, thereby tightening the turning radius, seems like a logical course of action. NHTSA researchers have participated in ESC demonstrations specifically designed to showcase understeer mitigation effectiveness, and acknowledge that in *certain driving situations, performed with certain vehicles, at certain vehicle speeds,* the technology can suppress excessive understeer, thereby improving the driver's ability to control the vehicle. However, truly understanding both what understeer mitigation can and, equally importantly, cannot do, is deceptively complicated. In fact, there are certain situations where understeer mitigation could potentially produce safety disbenefits if not properly tuned.

The technique used for mitigating excessive understeer is to apply unbalanced vehicle braking so as to generate an oversteering moment. Clearly, if too much oversteering moment is generated, then the vehicle may oversteer and spin out with obvious negative safety consequences.

Another possible problem with understeer mitigation is that reducing the non-linear understeer gradient increases the lateral responsiveness of the vehicle. This increases the lateral acceleration the vehicle can attain. For vehicles with low static stability factors and/or soft (in roll) suspensions, this may result in untripped rollover. Keep in mind that the idea of roll stability control (RSC) is to prevent untripped rollover by momentarily inducing excessive understeer, thereby reducing the lateral responsiveness of the vehicle and decreasing the lateral acceleration. Excessive understeer mitigation acts like anti-RSC. Based on this concern, ESC manufacturers generally do not perform understeer mitigation on high-coefficient-of-friction pavements for vehicles for which untripped rollover is possible (sport utility vehicles, pickup trucks, full sized vans).

For the reasons discussed above, understeer mitigation must be performed with great care. Too much mitigation can create safety problems (spin out or rollover).

*Problems With Performance Tests for Mitigating Excessive Understeer*

All current ESC designs that NHTSA has studied appear to include provisions for mitigating excessive understeer. How do we know this? We know this from driving these vehicles in the sort of maneuvers in which understeer mitigation should be performed and evaluating the resultant vehicle performance.

How are ESC algorithms for mitigating excessive understeer developed? Designers use a combination of analysis, vehicle dynamics simulation, and evaluation based on engineering judgment to develop the algorithms.

NHTSA cannot rely upon analysis, vehicle dynamics simulation, or evaluation based on engineering judgment for ensuring compliance with NHTSA regulations. We need a performance test, one that is objective, repeatable, generates reproducible results, is practicable to perform, and has acceptable face validity (*i.e.*, passing the test must enhance safety).

Tests designed to measure linear range understeer gradient (*e.g.* SAE J266 and ISO 4138) are not suitable to evaluate an ESC's understeer mitigation performance. ESC interventions occur when the driver's intended path differs from the actual path of the vehicle, as discussed above. Since this relationship is not violated during linear range driving, by the definition of linear range, ESC intervention will not occur. Without intervention, assessment of ESC performance is not possible.

NHTSA has carefully examined the existing vehicle dynamics literature including both the SAE and ISO standards. We have been unable to find any test designed to measure the non-linear understeer gradient over the full non-linear range of vehicle handling. A variety of theoretical difficulties make it unlikely that such test will ever be developed.

In order for ESC understeer mitigation to occur during a non-linear understeer mitigation scenario, differences between the calculated and actual paths of the vehicle must exceed a manufacturer-specified allowable threshold. NHTSA knows of no existing test protocol capable of objectively evaluating non-linear understeer mitigation. (Note that this is a somewhat different problem than that of measuring the non-linear understeer gradient over the full non-linear range of vehicle handling. The theoretical problems referred to above do not prevent the development of an objective test for evaluating non-linear understeer mitigation.)

What are the principal challenges to developing a suitable, objective, non-linear understeer mitigation performance test?

*Dry Test Challenges*

Understeer mitigation is only possible for vehicles that are designed to exhibit non-linear and terminal understeer. Although a reduction of understeer may allow the tires of these vehicles to better utilize the available friction, the subsequent increase in maximum lateral acceleration capacity is not desirable for all vehicles. Some vehicles, particularly those with low static stability factors such as sport utility vehicles, or those having soft (in roll) suspensions, understeer

designed into the chassis helps reduce the risk of on-road untripped rollover. By attempting to remove understeer, it is possible ESC could increase the likelihood of on-road untripped rollover.[102] Discussions with ESC manufacturers have indicated that tests performed on a high friction surface at moderate to high speeds may not trigger any understeer intervention from this type of vehicles' ESC systems. For this reason, NHTSA has concluded that it would be inappropriate to require that understeer mitigation occur in situations where vehicles are being operated on high friction surfaces at high speeds.

Unfortunately, the specific details of this potential compromise are not fully understood. NHTSA does not know of any vehicle whose understeer mitigation algorithms induce on-road untripped rollover, and therefore has no test data to objectively quantify the extent to which understeer mitigation may increase the likelihood of on-road untripped rollover beyond that realized with the same vehicle evaluated with ESC disabled. Nevertheless, if NHTSA were to require that understeer mitigation effectiveness be evaluated using a test performed on a dry high coefficient surface, the potential for achieving good understeer control on the test track at the expense of compromised real world driving safety cannot be ignored.

NHTSA notes that ESC systems containing rollover mitigation control (RSC) algorithms present another reason that understeer mitigation should not be evaluated on high friction surfaces. To create a state of non-linear understeer for testing purposes, large steering wheel angles and rates must be inputted. For vehicles with RSC, these severe inputs may be interpreted as a threat to the vehicle's roll stability. If RSC intervention occurs, the effect will be a brief period of substantially increased understeer, where no understeer mitigation would occur. Although NHTSA has no crash data quantifying the safety benefits of RSC, we do not want to preclude implementation of RSC technology as the result of an inappropriate understeer mitigation test.

In summary, performing tests designed to evaluate ESC understeer mitigation technology on dry, high friction surfaces presents too many problems. NHTSA then considered whether it could mandate such tests on low friction surfaces, as discussed below.

*Wet Test Challenges*

So as to avoid the problems associated with testing on dry, high-friction surfaces, NHTSA believes that ESC understeer mitigation performance testing must be performed on a low-friction test surface such as wet Jennite or wet basalt tiles. Use of low friction surfaces, where peak coefficient of friction would be expected to range between 0.3 and 0.5, would prevent the development of lateral accelerations capable of inducing on-road untripped rollover. This fact alone resolves many of the issues that plague the use of high friction surfaces for understeer mitigation assessment. NHTSA does not expect any adverse repercussions for requiring a properly tuned ESC to invoke understeer mitigation on low friction surfaces, regardless of vehicle type. Furthermore, since on-road untripped rollover is not expected, RSC intervention should not confound understeer mitigation assessment on low friction surfaces, as activation of such interventions should not occur.

Unfortunately, low friction tests have historically been plagued with high test variability when compared to otherwise equivalent tests performed on high friction surfaces. They can also be confounded by hydroplaning, and can be difficult-to-impossible to perform within the confines of the relatively small low friction test pads available at the various proving grounds. Resolution of these matters is imperative if understeer mitigation effectiveness is to be objectively assessed.

NHTSA performed numerous low-friction tests during the 2006 testing season. Most of these tests were based on the ''ramp steer'' maneuver, a test NHTSA believes is its best candidate for objectively evaluating ESC understeer mitigation performance. This maneuver uses a steering ramp (input at one of eight steering velocities) from zero to a target steering wheel angle, a brief pause, and a return of the steering wheel back to zero degrees. Using the ramp steer maneuver, data were collected during tests performed with three passenger cars, one sports car, three sport utility vehicles, and one 15-passenger van. To compare how the maneuver output might change as a function of surface, tests were performed on the Transportation Research Center's (TRC) Vehicle Dynamics Area Jennite pad, and on the General Motors Milford Proving Grounds basalt tile pad. Results from this testing will be provided in a detailed technical report, to be released spring 2007.

NHTSA is presently evaluating two ways to reduce factors contributing to test variability on low friction surfaces, specifically in the realm of improved water delivery and optimized water delivery-to-test-conduct timing. Preliminary results from NHTSA's 2006 understeer mitigation research indicated similar variability for tests performed on Jennite and basalt. From a logistics standpoint, this is important since basalt test pads of dimensions appropriate for use in understeer mitigation are not common. NHTSA knows of only one basalt pad capable of supporting understeer mitigation tests (located at the General Motors Milford Proving Grounds), and considers even the dimensions of this pad to be only marginally adequate. Construction of a new basalt facility capable of supporting ramp steer tests is cost-prohibitive for NHTSA, as such facilities cost millions of dollars. TRC's Jennite pad is also marginal for understeer mitigation testing. Again, increasing the size of the TRC Jennite pad will be extremely expensive, although not to the extent a basalt facility would be.

In short, resolution of low friction testing issues is the topic of ongoing research, and the primary challenge in the development of an objective and repeatable way of assessing light vehicle understeer mitigation effectiveness. However, there are many issues that remain to be resolved, ranging from a lack of large-enough test surfaces to possible performance criteria before NHTSA could have a suitable low coefficient of friction understeer mitigation performance test.

Based on preliminary results from NHTSA's 2006 understeer mitigation research, we have investigated two possible types of low coefficient of friction understeer mitigation performance tests. The easier type of test to perform will be called the Understeer Presence test, the more difficult type, the Full Understeer Performance test.

The Understeer Presence test would check that a vehicle is equipped with an ESC system that will limit vehicle understeer in at least some conditions. We are fairly confident that this test can be developed with one to two years of research. The drawback of this test is that it will accomplish nothing more than providing a means for NHTSA to check that a vehicle meets the understeer mitigation requirements of FMVSS 126. It is not clear that this test will be as robust as the method (see discussion below) that NHTSA intends to use in the absence of this test to check compliance with the understeer mitigation portion of FMVSS 126. In other words, having this test will do nothing to improve vehicle safety beyond the understeer requirement presently specified in FMVSS No. 126. Based on this fact, NHTSA's has no plans at this time to expend further effort to develop the Understeer Presence test.

The Full Understeer Performance test would actually impose further understeer mitigation requirements beyond those currently specified in FMVSS 126. We hope, but do not know, that these additional understeer mitigation requirements would further enhance vehicle safety. Unfortunately, development of the Full Understeer Performance test is expected to take at least five years and require provision of substantial financial resources.

To summarize the above discussion, we do not know of any existing objective performance tests for understeer mitigation. We believe that it is not appropriate to perform an understeer mitigation performance test on a dry, high coefficient of friction test surface. NHTSA has been working on a low coefficient of friction understeer mitigation performance test and has found some approaches that its researchers believe to be promising. However, considerable work remains to develop such a performance test.

**How NHTSA Will Enforce FMVSS No. 126 Requirements Without an Understeer Performance Test**

The final regulatory text for FMVSS No. 126 requires light vehicles to be equipped with a system meeting the definition of ESC. A portion of the revised ESC definition from that standard is:

*Electronic Stability Control System or ESC System* means a system that has all of the following attributes:* * *

(2) That is computer controlled with the computer using a closed-loop algorithm to

[102] It is important to note that the braking action present during ESC understeer mitigation intervention will help slow the vehicle somewhat, decreasing the amount of energy available to produce rollover.

limit vehicle oversteer and to *limit vehicle understeer;* (emphasis added)* * *

Without having a performance test for understeer mitigation, how will NHTSA ensure that light vehicles are equipped with a system that will limit vehicle understeer under these circumstances? This will be accomplished through a two part process: ensuring that vehicles have all of the hardware needed to limit vehicle understeer (as required by FMVSS No. 126), and checking engineering documentation provided by the vehicle and ESC manufacturers that the ESC algorithm is capable of recognizing and limiting excessive understeer.

The regulatory text of FMVSS No. 126 includes S5.1 *Required Equipment.* Under this section, S5.1.1 mandates that light vehicles must have an ESC system as follows:

*S5.1.1 Is capable of applying brake torques individually to all four wheels and has a control algorithm that utilizes this capability.*

Having the capability of applying all four brakes individually is necessary to allow the ESC to limit vehicle understeer when appropriate. ESC systems have been developed (called two-channel ESC systems) that are capable of applying only the vehicle's front brakes. These two-channel ESC systems can prevent crashes from occurring in three of the four ways that four-channel ESC systems can prevent crashes, although perhaps not as well. Two-channel ESC can: (1) Prevent the vehicle from becoming oversteer and spinning out, (2) preventing untripped vehicle rollovers by using RSC-type algorithms, and (3) slow the vehicle down. What two-channel ESC cannot do is mitigate excessive understeer.

The development of an ESC algorithm is a large and complicated task. Development of the understeer mitigation portion of such an algorithm requires much analysis, vehicle dynamics simulation, and testing by engineers. We anticipate that ESC manufacturers will document the results of such analysis, simulation, and testing. This engineering documentation can be shown to NHTSA when it is necessary to demonstrate that an ESC algorithm is capable of limiting vehicle understeer when appropriate.

In summary, we believe that the requirement that all light vehicles be equipped with an ESC system capable of applying all four brakes individually, combined with the engineering documentation developed by ESC manufacturers, will be sufficient to enforce the understeer requirements of the ESC definition in FMVSS No. 126.

*Responses to Other Understeer-Related Issues*

One commenter stated that some manufacturers might supply ESC systems that do not adequately compensate for understeer loss of control circumstances, arguing that there are already vast differences in tuning among various ESC systems. They predicted that failure of the agency to specify understeer performance requirements would maintain or expand differences between ESC performance from one vehicle make or model to another and could cause the standard to forgo prevention of additional fatalities and injuries. The commenter did not provide any data to support this ''prediction.'' NHTSA will continue to monitor the safety performance of vehicles equipped with different ESC systems. If we do see safety related differences between ESC performances from one vehicle make or model to another, we will use the information to require safer ESC systems. Unfortunately, we do not know today, and are unlikely to know for the next several years, what understeer performance requirements would improve safety.

One commenter argued that since SAFETEA–LU directs the agency to establish performance *criteria* for stability enhancing technologies (*i.e.*, noting the plural nature of that statutory provision, which they suggested requires something more than an oversteer *criterion* alone), including the understeer component that the agency has determined to be a necessary part of ESC systems from a safety perspective is also required from a legal perspective. We do not agree with this comment. While SAFETEA–LU does direct the agency to establish performance *criteria* (which we agree is plural) for stability-enhancing technologies, having both lateral stability and lateral responsiveness *criteria* in the current FMVSS 126 fulfills this Congressional requirement without adding an understeer performance test.

*Conclusions about Understeer Mitigation*

Multiple commenters have requested that we include a performance test for excessive understeer mitigation in FMVSS 126. A number of other questions about understeer mitigation were also asked in these comments.

We have tried in our response to these comments to fully explain NHTSA's position on this important issue. Unfortunately, mitigation of excessive understeer is an extremely complex technical problem, so our response has been long and technical. In this final section of the response, we will try to summarize the results of the previous discussion.

First, excessive understeer mitigation involves the non-linear understeer gradient, a very different quantity than the linear understeer gradient (a calculation that is commonly mentioned in vehicle dynamics literature). While the non-linear understeer gradient shares many important properties with the linear understeer gradient, the non-linear gradient is both theoretically and practically a far more complex concept.

Figure 1, presented previously, probably gives the clearest idea as to what we mean by mitigation of excessive understeer. The goal is for ESC to change the non-linear understeer gradient of the vehicle from the higher to the lower curve.

For reasons that were explained, mitigation of excessive understeer must be performed with great care. Too much mitigation can create safety problems (spin out or rollover).

Tests designed to measure linear range understeer gradient (*e.g.* SAE J266 and ISO 4138) are not suitable to evaluate an ESC's understeer mitigation performance. ESC interventions occur when the driver's intended path (*i.e.*, that calculated by the ESC control algorithms) differs from the actual path of the vehicle (*i.e.*, as measured by ESC sensors). Since by definition, this relationship is not violated during linear range driving, ESC intervention will not occur. Without intervention, assessment of ESC performance is not possible.

NHTSA has carefully examined the existing vehicle dynamics literature including both the SAE and ISO standards. We have been unable to find any test designed to measure the non-linear understeer gradient over the full non-linear range of vehicle handling. A variety of theoretical difficulties make it unlikely that such test will ever be developed.

In order for ESC understeer mitigation to occur during a non-linear understeer mitigation scenario, differences between the calculated and actual paths of the vehicle must exceed a manufacturer-specified allowable threshold. NHTSA knows of no existing test protocol capable of objectively evaluating non-linear understeer mitigation. (Note that this is a somewhat different problem than that of measuring the non-linear understeer gradient over the full non-linear range of vehicle handling. The theoretical problems referred to above do not prevent the development of an objective test for evaluating non-linear understeer mitigation.)

Performing tests designed to evaluate ESC understeer mitigation technology on dry high friction surfaces presents too many problems. Rather, NHTSA believes it is much more appropriate to perform such tests on low friction surfaces.

NHTSA would like to include a performance standard for understeer mitigation in FMVSS No. 126. Unfortunately, we do not know of any existing objective performance tests for understeer mitigation. We believe that it is not appropriate to perform an understeer mitigation performance test on a dry, high coefficient of friction test. NHTSA has been working on a low coefficient of friction understeer mitigation performance test and has found some approaches that its researchers believe to be promising. However, considerable effort remains to develop such a performance test. Based on expected costs and benefits, NHTSA is not currently developing such a test.

Without having a performance test for understeer mitigation, how will NHTSA ensure that light vehicles are equipped with a system that will limit vehicle understeer when appropriate? This will be accomplished through a two part process: ensuring that vehicles have all of the hardware needed to limit vehicle understeer (as required by FMVSS No. 126), and checking engineering documentation provided by the vehicle and ESC manufacturers that the ESC algorithm is capable of limiting vehicle understeer when appropriate.

In conclusion, while NHTSA would like to include a performance standard for understeer intervention in FMVSS No. 126, we unfortunately do not know of any suitable performance tests for mitigation of excessive understeer. We are unwilling to forgo the

large safety benefits that ESC will provide to the American public in the near future just because we might, some years from now, be able to produce a better standard. If, in the future, we see ways to improve FMVSS No. 126 to increase motoring safety, NHTSA would at that time undertake another rulemaking activity to gain those benefits.

[FR Doc. 07–1649 Filed 4–5–07; 8:45 am]

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Federal Register

Friday,
April 6, 2007

# Part III

# Department of Commerce

## Bureau of the Census

## Census County Division (CCD) and Equivalent Entities, Census Designated Place (CDP), Census Tract, and Census Block Group Programs for the 2010 Census—Proposed Changes and Proposed Criteria; Notices

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket Number 070111009–7011–01]**

### Census County Division (CCD) and Equivalent Entities Program for the 2010 Census—Proposed Change and Proposed Criteria

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of proposed program revisions and request for comments.

**SUMMARY:** CCDs and equivalent entities are statistical geographic entities established cooperatively by the Bureau of the Census (Census Bureau) and officials of state and local governments in 22 states [1] where minor civil divisions (MCDs) either do not exist or are unsatisfactory for reporting decennial census data. The primary goal of the CCD program has been to establish and maintain a set of subcounty [2] units that have stable boundaries and recognizable names.

The Census Bureau is publishing this notice in the **Federal Register** to request comments from the public and other government agencies. The Census Bureau will respond to the comments received as part of the publication of final criteria in the **Federal Register**. After the final criteria are published in the **Federal Register**, the Census Bureau will offer designated governments or organizations an opportunity to review and, if necessary, suggest updates to the boundaries and attributes of the CCDs in their geographic area under the Participant Statistical Areas Program (PSAP). In addition to CCDs, the program also encompasses the review and update of census tracts, block groups, and census designated places.

**DATES:** Written comments must be submitted on or before July 5, 2007.

**ADDRESSES:** Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, Room 8H001, mail stop 0100, Washington, DC 20233–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on this proposed program should be directed to Michael Ratcliffe, Chief, Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *geo.psap.list@census.gov* or telephone at 301–763–3056.

**SUPPLEMENTARY INFORMATION:**

## I. History

When CCDs were introduced prior to the 1950 Census, few alternatives were available for the provision of statistical data related to relatively stable, subcounty geographic units. Census tracts were defined in only a subset of metropolitan area counties; MCDs existed in all counties, but in some states MCD boundaries changed frequently enough that they were not useful for comparing statistical data from one decade to another.

For much of the period from the 1950 Census through the 1980 Census, county subdivisions (MCDs and CCDs) provided the only subcounty unit of geography at which data users could obtain statistical data for complete coverage of counties nationwide. The introduction of block-numbering areas (BNAs) in counties without census tracts for the 1990 Census offered an alternate subcounty entity for which data could be tabulated. For Census 2000, the Census Bureau introduced census tracts nationwide (in many counties BNAs were simply relabeled as ''census tracts'') and the greater dissemination of, and ability to analyze, data at the census tract-level made CCDs less necessary as statistical reporting units.

## II. General Principles and Guidelines for CCDs for the 2010 Census

### *A. General Principles and Guidelines*

1. The primary goal of the CCD program has been to establish and maintain a set of subcounty units that have stable boundaries and recognizable names. The boundaries of CCDs usually coincide with visible features or stable, significant legal boundaries, such as the boundary of an American Indian reservation, federally-managed land, or conjoint incorporated places, and have no legal status; there are no officials elected to serve traditional local governmental functions.

2. A CCD usually represents a single contiguous area consisting of one or more communities, trading centers, or, in some instances, major land uses that are relatively compact in shape.

3. The area of a CCD has a relationship to the existing census tracts, usually consisting of one or more contiguous census tracts or having two or more CCDs nesting within a single census tract. The boundaries of CCDs generally align with census tract boundaries. Note that a county with a population less than the optimum population for a census tract (less than 4,000 people) may contain more CCDs than census tracts. For example, McCone County, Montana, which has a 2005 estimated population of 1,805, contains only one census tract, which covers the full extent of the county, but is divided into two CCDs.

4. Since the 1950s, the Census Bureau has worked with state and local officials to replace MCDs with CCDs for the collection, presentation, and analysis of census statistics, particularly in states in which MCDs do not provide governmental services and functions, and in which MCD boundaries tend to change between decennial censuses. To date, 22 states have shifted to CCDs: Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Kentucky, Montana, Nevada, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Washington, and Wyoming.

### *B. Proposed Changes to the CCD Program*

The Census Bureau has noted that data users are not requesting or using data for CCDs to the extent they did in the past, preferring instead to analyze and aggregate data by census tract and block group. Some data users may view the introduction of CCDs in hierarchical tabulations as hampering data extraction. Therefore, if interest no longer exists and data are not used, or the geography introduces unnecessary complexity in the hierarchy, the Census Bureau will consider eliminating CCDs for the 2010 Census.

Therefore, the Census Bureau is interested in ascertaining whether data users still find CCDs to be a useful geographic entity for reporting and analyzing statistical data, and if so, specific examples of CCD usage. In addition, and related to this request for information, the Census Bureau proposes the following options for CCDs:

1. Eliminate the CCD concept; do not replace with another type of subcounty geographic unit. If this proposal is adopted, the Census Bureau will not replace the CCD concept with another type of county subdivision entity (i.e., MCDs or some other type of legal, administrative, or statistical area). As a result, there would be no geographic entity defined at the county subdivision level of the census geographic hierarchy for those areas where CCDs existed previously.

[1] In Alaska, census subareas are equivalents of CCDs. For the purposes of this notice, the term ''CCD'' will also refer to census subareas in Alaska.

[2] For Census Bureau purposes, the term ''county'' includes parishes in Louisiana; boroughs and census areas in Alaska; independent cities in Maryland, Missouri, Nevada, and Virginia; districts in American Samoa and the U.S. Virgin Islands; municipalities in the Commonwealth of the Northern Mariana Islands; municipios in Puerto Rico; and the areas constituting the District of Columbia and Guam. This notice will refer to all of these entities collectively as ''counties.''

2. Retain the CCD concept. The Census Bureau will retain the CCD concept if data user comments indicate that CCDs continue to be useful geographic units for reporting statistical data, or if comments indicate that creation of a gap in the census geographic hierarchy is not favorable (see option #1 above). If the CCD concept is retained, the Census Bureau will strongly encourage partners in the program to maintain CCD boundaries as defined for Census 2000, to the extent possible, in order to preserve comparability of data from one decade to another.

The Census Bureau may consider other proposals, for example, to eliminate CCDs on a state-by-state basis.

*C. CCD Criteria for the 2010 Census*

The criteria proposed herein apply to the United States, [3] including American Indian reservations and off-reservation trust lands, Puerto Rico, and the Island. Areas. [4] The Census Bureau may modify and, if necessary, reject any proposals for census tracts that do not meet the established criteria. In addition, the Census Bureau reserves the right to modify the boundaries and attributes of CCDs as needed to maintain geographic relationships before the final tabulation geography is set for the 2010 Census.

Should CCDs be retained for the 2010 Census, the Census Bureau will require that CCDs (1) have community orientation, (2) have visible and/or stable boundaries, (3) conform to census tract boundaries, and (4) have recognizable names.

1. Community Orientation

Each CCD should focus on one or more communities or places and encompass in some fashion the additional surrounding territory that is served by these. The definition of community should take into account factors, such as production, marketing, consumption, and the integrating factor of local institutions.

The community in which a CCD is centered usually is an incorporated place or an unincorporated community, which might be identified as a census designated place. In some cases, the CCD may center on a major area of significantly different land use or ownership, such as a large military base or American Indian reservation. A CCD should always comprise a reasonably compact, continuous land area.

2. Visible, Stable Boundaries

To make the location of CCD boundaries less ambiguous, CCD boundaries should follow, wherever possible, visible and identifiable features. The use of visible features makes it easier to locate and identify CCD boundaries over time, as the locations of many visible features in the landscape tend to change infrequently, making data collection easier and more reliable while reducing the possibility for data allocation errors. The Census Bureau also permits the use of state, county, and census tract boundaries, defined federally-recognized American Indian reservations, and the boundaries of federally, state, or locally managed land.

The following features are acceptable:

a. County boundaries (always a CCD boundary);

b. Census tract boundaries, which usually follow visible, perennial, natural, and cultural features, such as roads, rivers, canals, railroads, or above-ground high-tension power lines;

c. Legally-defined, federally-recognized American Indian reservation boundaries;

d. The boundaries of federally, state, or locally managed land, such as National Parks, National Monuments, National Forests, other types of large parks or forests, airports, marine ports, penitentiaries/prisons, military installations, or other facilities; and

e. Conjoint city limits (in certain situations).

f. When the above types of features are not available for use as CCD boundaries, the Census Bureau may, at its discretion, approve other nonstandard, visible features, such as ridge lines, above-ground pipelines, streams, or fence lines. The Census Bureau may also accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features, such as the boundaries of cemeteries, golf courses, glaciers, or the straight-line extensions of visible features and other lines-of-sight.

3. Census Tract Boundaries, CCD Population Size

Whenever possible, a CCD should encompass one or more contiguous census tracts. Therefore, CCD boundaries should be consistent with census tract boundaries. Population size is not as an important consideration with CCDs as it is with census tracts. Historically, CCDs have ranged from a few hundred people (in selected situations) to more than one million. However, data quality and availability may be factors that local governments and planners should consider in defining geographic areas. As a general rule, estimates of demographic characteristics of small areas from the American Community Survey and the Puerto Rico Community Survey will be subject to higher variances than comparable estimates for areas with larger populations. In addition, the Census Bureau's disclosure rules may have the effect of restricting the availability and amount of data for areas with small populations. Therefore, CCDs that are new for the 2010 Census must have a population of at least 1,200 people, the minimum for a census tract. Adhering to this minimum threshold will improve data reliability and minimize the application of disclosure avoidance methodologies (e.g., data suppression or data swapping) to tabulated data.

4. Name Identification

A CCD usually should be named after the largest population center or place within it (e.g., Taos, Chimayo, or Ohkay Owingeh, NM). Sometimes a CCD name may represent the two largest centers (e.g., Mount Pleasant-Moroni, UT). In some situations, a CCD may be named after a prominent physical feature (e.g., Castle Rock, CO, and Mount Rainier, WA) or a distinctive region within the county (e.g., Death Valley, CA; Everglades and Lower Keys, FL; and Tellico Plains, TN). In other cases, a CCD name may consist of the county name and a compass direction to indicate the portion of the county in the CCD, or a place name and a compass direction to give the CCD location relative to the place. The directional indicator usually precedes a county name (e.g., Northeast Cobb, GA). If a place name is used, the directional indicator follows it (e.g., Del Rio Northwest, TX). In all cases, the objective is to clearly identify the extent of the CCD by means of an area name since CCD names always should be meaningful to data users. Any name used as a CCD name must also be recognized by the Board on Geographic Names for federal use and appear in the Geographic Names Information System maintained by the U.S. Geological Survey. This includes any individual names combined to make a hyphenated CCD name.

**III. Definitions of Key Terms**

American Indian reservation—A federally-recognized American Indian land area with boundaries established by final treaty, statute, executive order, and/or court order, and over which a federally-recognized American Indian tribal government has governmental

[3] For Census Bureau purposes, the United States includes the 50 states and the District of Columbia.

[4] For Census Bureau purposes, the Island Areas include the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

authority. Along with reservations, designations such as colonies, communities, pueblos, rancherias, and reserves apply to American Indian reservations.

Block Group—A statistical subdivision of a census tract consisting of all census blocks whose numbers begin with the same digit in a census tract.

Census block—A geographic area bounded by visible and/or invisible features in the Census Bureau's Topographically Integrated Geographic Encoding and Referencing system, and shown on maps prepared by the Census Bureau. A block is the smallest geographic entity for which the Census Bureau tabulates decennial census data.

Census designated place—A statistical geographic entity with a concentration of population, housing, and commercial structures that is identifiable by name, but is not within an incorporated place.

Census tract—A small, relatively permanent statistical geographic division of a county defined for the tabulation and publication of Census Bureau data. The primary goal of the census tract program is to provide a set of nationally consistent small, statistical geographic units, with stable boundaries, that facilitate analysis of data across time.

Conjoint—A description of a boundary shared by two adjacent geographic areas.

Contiguous—A description of geographic areas that are adjacent to one another, sharing either a common boundary or point.

Federally managed land—Territory that is federally owned and administered by an agency of the U.S. federal government, such as the National Park Service, Bureau of Land Management, or Department of Defense.

Incorporated place—A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, generally to provide specific governmental services for a concentration of people within legally prescribed boundaries.

Minor civil division—The primary governmental or administrative division of a county in 28 states, Puerto Rico, and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

Nonvisible feature—A map feature that is not visible on the ground, such as a city or county boundary through space, a property line running through space, a short line-of-sight extension of a road, or a point-to-point line of sight.

Visible feature—A map feature that can be seen on the ground, such as a road, railroad track, major above-ground transmission line or pipeline, stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features pose no problem in their location during fieldwork.

### Executive Order 12866

This notice has been determined to be not significant under Executive Order 12866.

### Paperwork Reduction Act

This program notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Dated: April 3, 2007.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. E7–6464 Filed 4–5–07; 8:45 am]

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## DEPARTMENT OF COMMERCE

## Bureau of the Census

**[Docket Number 070104002–7003–01]**

## Census Designated Place (CDP) Program for the 2010 Census—Proposed Criteria

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of proposed program and request for comments.

**SUMMARY:** Census designated places (CDPs) [1] are statistical geographic entities representing closely settled, unincorporated communities that are locally recognized and identified by name. They are the statistical equivalents of incorporated places, with the primary differences being the lack of both a legally defined boundary and an active, functioning governmental structure, chartered by the state and administered by elected officials. CDPs defined for the 2010 Census also will be used to tabulate American Community Survey, Puerto Rico Community Survey, and Economic Census data after 2010, and potentially data from other Bureau of the Census (Census Bureau) censuses and surveys.

The Census Bureau is publishing this notice in the **Federal Register** to request comments from the public and other government agencies. The Census Bureau will respond to the comments received as part of the publication of final criteria in the **Federal Register**. After the final criteria are published in the **Federal Register**, the Census Bureau will offer designated governments or organizations an opportunity to review and, if necessary, suggest updates to the boundaries and attributes of the CDPs in their geographic area under the Participant Statistical Areas Program (PSAP). In addition to CDPs, the program also encompasses the review and update of census tracts, block groups, and census county divisions.

**DATES:** Written comments must be submitted on or before July 5, 2007.

**ADDRESSES:** Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, Room 8H001, mail stop 0100, Washington, DC 20233–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on this proposed program should be directed to Michael Ratcliffe, Chief, Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *geo.psap.list@census.gov* or telephone at 301–763–3056.

**SUPPLEMENTARY INFORMATION:**

### I. History

The CDP concept and delineation criteria have evolved over the past five decades in response to data user needs for place-level data. This evolution has taken into account differences in the way in which places were perceived, and the propensity for places to incorporate in various states. The result, over time, has been an increase in the number and types of unincorporated communities identified as CDPs, as well as increasing consistency in the relationship between the CDP concept and the kinds of places encompassed by the incorporated place category, or a compromise between localized perceptions of place and a concept that would be familiar to data users throughout the United States, Puerto Rico, and the Island Areas.

[1] The term CDP includes communidades and zonas urbanas in Puerto Rico.

Although not as numerous as incorporated places or municipalities,[2] CDPs have been important geographic entities since their introduction for the 1950 census. (CDPs were referred to as ''unincorporated places'' from 1950 through the 1970 decennial censuses.) For the 1950 Census, CDPs were defined only outside urbanized areas and were required to have at least 1,000 residents. For the 1960 Census, CDPs could also be identified inside urbanized areas outside of New England, but these were required to have at least 10,000 residents. The Census Bureau modified the population threshold within urbanized areas to 5,000 in 1970, allowed for CDPs in urbanized areas in New England in 1980, and lowered the urbanized area threshold again to 2,500 in 1990. In time, other population thresholds were adopted for identification of CDPs in Alaska, as well as in Puerto Rico, the Island Areas, and on American Indian reservations. The Census Bureau eliminated all population threshold requirements for Census 2000, achieving consistency between CDPs and incorporated places, for which the Census Bureau historically has published data without regard to population size.

According to Census 2000, more than 35 million people in the United States[3], Puerto Rico, and the Island Areas[4] lived in CDPs. The relative importance of CDPs varies from state to state depending on laws governing municipal incorporation and annexation, but also depending on local preferences and attitudes regarding the identification of places.

## II. Census Designated Place Criteria and Characteristics for the 2010 Census

The criteria proposed herein apply to the United States, including American Indian reservations and off-reservation trust lands, Puerto Rico, and the Island Areas. In accordance with the final criteria, the Census Bureau may modify and, if necessary, reject any proposals for CDPs that do not meet the established criteria. In addition, the Census Bureau reserves the right to modify the boundaries and attributes of CDPs as needed to maintain geographic relationships before the final tabulation geography is set for the 2010 Census.

The Census Bureau proposes the following criteria and characteristics for use in identifying the areas that will qualify for designation as CDPs for use in tabulating data from the 2010 Census, the American Community Survey, the Puerto Rico Community Survey, the Economic Census, and potentially other Census Bureau censuses and surveys.

1. A CDP constitutes a single, closely settled center of population that is named; to the extent possible, individual unincorporated communities should be identified as separate CDPs. Similarly, a single community should be defined as a single CDP as opposed to multiple CDPs with each part referencing the community name and a directional term (i.e., north, south, east, or west). Since a CDP is defined to provide data for a single, named locality, the Census Bureau generally will not accept combinations of places and hyphenated place names defined as a CDP. For example, CDPs such as Poplar-Cotton Center and Downieville-Lawson-Dumont are no longer acceptable. Combinations of places often were defined as a single CDP in order to comply with the Census Bureau's minimum population requirements. The Census Bureau's elimination of population threshold criteria has made such combinations unnecessary. Others were combined because visible features were not available for use as boundaries for separate CDPs. The Census Bureau is proposing use of some nonvisible boundaries so that participants can separate individual communities and dispense with multi-place CDPs.

2. A CDP generally consists of a contiguous cluster of census blocks comprising a single piece of territory and containing a mix of residential and commercial uses similar to that of an incorporated place of similar size. Some CDPs, however, may be predominantly residential; such places should represent recognizably distinct, locally known communities, but not typical suburban subdivisions. Examples of such predominantly residential communities that can be recognized as CDPs are colonias found along the U.S.-Mexico border, small rural communities, and unincorporated resort and retirement communities.

3. A CDP may not be located, either partially or entirely, within an incorporated place or another CDP.

4. A CDP may not be coextensive with the boundaries of one or more governmentally functioning Minor Civil Divisions (MCDs) in the six New England states, Michigan, Minnesota, New Jersey, New York, Pennsylvania, and Wisconsin, nor may it encompass the entirety of one town or township and contain portions of adjacent towns or townships.

This criterion is proposed for the first time for the 2010 Census in order to eliminate redundancy in tabular presentations of data published by the Census Bureau for towns/townships and places. For instance, because geographic comparison tables and inventory tables providing data for places also contain data for MCDs within these twelve states, redundancy occurs wherever a CDP is coextensive with an MCD. For example, in place-level tables for Massachusetts, data are published for both Framingham town and Framingham CDP, the latter covering the same population and territory as the former. In adopting this criterion, the Census Bureau will explore ways to enhance the presentation and visibility of data for MCDs in these twelve states, to make it clearer that many of the MCDs in these states are seen as similar to places in other parts of the United States.

5. A CDP may be located in more than one county but must not cross state boundaries. It is important to note, however, that since county boundaries provide important demarcations for communities, CDPs that cross county lines should be kept to a minimum and identified only when the community clearly sees itself existing on both sides of a county boundary.

6. There are no minimum population or housing unit thresholds for defining CDPs; however a CDP must contain some population or housing units or both. The Census Bureau eliminated minimum population thresholds for CDPs for Census 2000, enabling the identification and tabulation of data for small, unincorporated communities, particularly in rural areas, as CDPs. Six CDPs identified for Census 2000, however, lacked any population and housing; three CDPs had some population, but no housing units; and an additional 23 CDPs contained less than ten housing units. The Census Bureau recognizes that some communities, such as resort or other kinds of seasonal communities, may lack population at certain times of the year. Nevertheless, there should be some evidence, generally in the form of houses, barracks, dormitories, commercial buildings and/or other structures, providing the basis for local perception of the place's existence. For the 2010 Census, the Census Bureau will not accept a CDP delineated with zero population and zero housing units. The Census Bureau will review the

[2] Known by various terms throughout the United States: cities, towns (except in the six New England States, New York, and Wisconsin), villages, and boroughs (except in New York and Alaska).

[3] For Census Bureau purposes, the United States includes the fifty states and the District of Columbia.

[4] For Census Bureau purposes, the Island Areas includes the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. There are no CDPs in American Samoa because villages cover its entire territory and population.

number of housing units within the place, as reported in the previous decennial census, and consider whether additional information is needed before recognizing the CDP. Participants submitting boundaries for places with less than 10 housing units may be asked to provide additional information attesting to the existence of the CDP.

7. CDP boundaries should follow visible features, except in those circumstances when a CDP's boundary is coincident with the nonvisible boundary of a state, county, MCD (in the six New England states, Michigan, Minnesota, New Jersey, New York, Pennsylvania, and Wisconsin), or incorporated place. In selected circumstances, CDP boundaries can follow other nonvisible features. Reliance upon visible features sometimes has resulted in overbounding of the CDP in order to include housing units on both sides of a road or street feature. While this has helped ensure accurate allocation of housing units to the place, it also has meant that territory, population, and housing not associated with the place have been included in the CDP. For the 2010 Census, advances and enhancements in the positional accuracy of housing units within the Census Bureau's geographic databases make it possible to consider the potential use of nonvisible boundaries when defining CDPs. Such boundaries might include parcel boundaries and public land survey system (PLSS) lines; fencelines; national, state, or local park boundaries; ridgelines; or drainage ditches.

8. The CDP name should be one that is recognized and used in daily communication by the residents of the community. Because unincorporated communities lack legally-defined boundaries, a commonly used community name and the geographic extent of its use by local residents is often the best identifier of the extent of a place, the assumption being that if residents associate with a particular name and use it to identify the place in which they live, then the CDP's boundaries can be mapped based on the use of the name. There should be features in the landscape that use the name, such that a non-resident would have a general sense of the location or extent of the community; for example, signs indicating when one is entering the community; highway exit signs that use the name; businesses, schools, or other buildings that make use of the name. It should not be a name developed solely for planning or other purposes (including simply to obtain data from the Census Bureau) that is not in regular daily use by the local residents and business establishments.

9. A CDP may not have the same name as an adjacent or nearby incorporated place. The assumption behind this criterion is that if the community does not have a name that distinguishes it from other nearby communities, it probably is not a distinct place. Use of directional terms (''north,'' ''south,'' ''east,'' ''west,'' and so forth) to merely differentiate the name of a CDP from a nearby municipality where this name is not in local use is not acceptable. For example, ''North Laurel'' would be permitted as a name if this name were in local use. A name such as ''Laurel North'' would not be permitted if it were not in local use. Again, this has much to do with the way in which people typically refer to the places in which they live. It is permissible to change the name of a 2000 CDP for the 2010 Census if the new name provides a better identification of the community.

## III. Definitions of Key Terms

Alaska Native regional corporation (ANRC)—A corporate geographic area established under the Alaska Native Claims Settlement Act (Pub. L. 92–203), to conduct both the business and nonprofit affairs of Alaska Natives. Twelve ANRCs cover the State of Alaska except for the Annette Island Reserve.

American Indian reservation (AIR)—A federally recognized American Indian land area with boundaries established by final treaty, statute, executive order, and/or court order, and over which a federally recognized American Indian tribal government has governmental authority. Along with reservations, designations such as colonies, communities, pueblos, rancherias, and reserves apply to AIRs.

Census block—A geographic area bounded by visible and/or invisible features shown on a map prepared by the U.S. Census Bureau. A block is the smallest geographic entity for which the Census Bureau tabulates decennial census data.

Coextensive—Descriptive of two or more geographic entities that cover exactly the same area, with all boundaries shared.

Comunidad—A census designated place in Puerto Rico that is not related to a municipio's seat of government; called an aldea or a ciudad prior to the 1990 census.

Contiguous—Descriptive of geographic areas that are adjacent to one another, sharing either a common boundary or point of contact.

Housing unit—A house, an apartment, a mobile home or trailer, or a group of rooms or a single room occupied as a separate living quarter or, if vacant, intended for occupancy as a separate living quarter. Separate living quarters are those in which the occupants live and eat separately from any other residents of the building and which have direct access from outside the building or through a common hall.

Incorporated place—A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, generally to provide governmental services for a concentration of people within legally prescribed boundaries.

Island areas—An entity, other than a state or the District of Columbia, under the jurisdiction of the United States. For the 2010 Census, these will include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and several small islands in the Caribbean Sea and the Pacific Ocean. The Census Bureau treats each Island Territory as the statistical equivalent of a state.

Minor civil division—The primary governmental or administrative division of a county in 28 states, Puerto Rico, and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

Municipio—A type of governmental unit that is the primary legal subdivision of Puerto Rico. The Census Bureau treats the municipio as the statistical equivalent of a county.

Nonvisible feature—A map feature that is not visible, such as a city or county boundary, a property line running through space, a short imaginary extension of a street or road, or a point-to-point line.

Statistical geographic entity—A geographic entity that is specially defined and delineated, such as block group, CDP, or census tract, so that the Census Bureau may tabulate data for it. Designation as a statistical entity neither conveys nor confers legal ownership, entitlement, or jurisdictional authority.

Urbanized area (UA)—An area consisting of a central place(s) and adjacent urban fringe that together have a minimum residential population of at least 50,000 people and generally an overall population density of at least 1,000 people per square mile. The Census Bureau uses published criteria to determine the qualification and

boundaries of UAs at the time of each decennial census or from the results of a special census during the intercensal period.

Visible feature—A map feature that can be seen on the ground such as a road, railroad track, major above-ground transmission line or pipeline, stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features pose no problem in their location during field work.

Zona urbana—In Puerto Rico, the settled area functioning as the seat of government for a municipio. A zona urbana cannot cross a municipio boundary.

**Executive Order 12866**

This notice has been determined to be not significant under Executive Order 12866.

**Paperwork Reduction Act**

This program notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Dated: April 3, 2007.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. E7–6465 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket Number 070321065–7066–01]**

### Census Tract Program for the 2010 Census—Proposed Criteria

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of proposed program revisions and request for comments.

**SUMMARY:** Census tracts are relatively permanent small-area geographic divisions of a county or statistically equivalent entity [1] defined for the tabulation of decennial census data and selected other statistical programs. Census tracts also will be used to tabulate and publish estimates from the American Community Survey (ACS) [2] after 2010. The primary goal of the census tract program is to provide a set of nationally consistent small, statistical geographic units, with stable boundaries, that facilitate analysis of data across time.

Most provisions of the census tract criteria for the 2010 Census remain unchanged from those used in conjunction with Census 2000. However, based on consultation with data users and internal review the Bureau of the Census (Census Bureau) is proposing the following changes for the 2010 Census: (1) Lowering the minimum population threshold for census tracts; (2) using housing unit counts (as an alternative to population counts) in the review and update of tracts; (3) applying the same population and housing unit thresholds to all types of populated tracts within the United States,[3] including census tracts delineated on American Indian reservations and off-reservation trust lands,[4] Puerto Rico, the Island Areas,[5] and encompassing group quarters, military installations, and institutions; (4) allowing the delineation of census tracts for large water bodies with areas of approximately 100 square miles or more and special land use (e.g., large airports or public parks) with an official name; and (5) allowing for geographic frameworks of tribal tracts (separate from the standard census tracts defined within counties) to be defined within federally-recognized American Indian reservations and off-reservation trust lands.

In addition to proposed criteria, this notice includes a description of the changes from the criteria used for Census 2000 and a list of definitions of key terms used in the criteria.

The Census Bureau is publishing this notice in the **Federal Register** to request comments from the public and other government agencies. The Census Bureau will respond to the comments received as part of the publication of final criteria in the **Federal Register**. After the final criteria are published in the **Federal Register**, the Census Bureau will offer designated governments or organizations an opportunity to review and, if necessary, suggest updates to the boundaries and attributes (e.g., tract code) of the census tracts in their geographic area under the Participant Statistical Areas Program (PSAP). In addition to census tracts, the program also encompasses the review and update of block groups, census designated places, and census county divisions.

**DATES:** Written comments must be submitted on or before July 5, 2007.

**ADDRESSES:** Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, Room 8H001, mail stop 0100, Washington, DC 20233–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on this proposed program should be directed to Michael Ratcliffe, Chief, Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *geo.psap.list@census.gov* or telephone at 301–763–3056.

**SUPPLEMENTARY INFORMATION:**

**I. History of Census Tracts**

In 1905, Dr. Walter Laidlaw originated the concept of permanent, small geographic areas as a framework for studying change from one decennial census to another in neighborhoods within New York City. For the 1910 Census, eight cities—New York, Baltimore, Boston, Chicago, Cleveland, Philadelphia, Pittsburgh, and St. Louis—delineated census tracts (then termed ''districts'') for the first time. No additional jurisdictions delineated census tracts until just prior to the 1930 Census, when an additional ten cities chose to do so. The increased interest in census tracts for the 1930 Census is attributed to the promotional efforts of Howard Whipple Green, who was a statistician in Cleveland, Ohio, and later the chairman of the American Statistical Association's Committee on Census Enumeration Areas. For more than

[1] Includes parishes in Louisiana; boroughs, city and boroughs, census areas, and municipalities in Alaska; independent cities in Maryland, Missouri, Nevada, and Virginia; districts in American Samoa and the U.S. Virgin Islands; municipalities in the Commonwealth of the Northern Mariana Islands; municipios in Puerto Rico; the areas constituting the District of Columbia and Guam. This notice will refer to all these entities collectively as ''counties.''

[2] The ACS is conducted in the United States and in Puerto Rico. In Puerto Rico the survey is called the Puerto Rico Community Survey (PRCS). For ease of discussion, throughout this document the term ACS is used to represent the surveys conducted in the United States and in Puerto Rico.

[3] For Census Bureau purposes, the United States includes the fifty States and the District of Columbia.

[4] The proposed criteria for the tribal statistical areas program will be outlined in a separate **Federal Register** notice. In the tribal statistical areas program, federally recognized American Indian tribes that have a reservation and/or off-reservation trust land may delineate census designated places (CDPs), and, if these areas have a population of 2,400 or greater, may delineate tribal tracts and tribal block groups for their reservation and off-reservation trust land.

[5] For Census Bureau purposes, the Island Areas includes American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the U.S. Minor Outlying Islands. The U.S. Minor Outlying Islands is an aggregation of nine U.S. territories: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

twenty-five years, Mr. Green strongly encouraged local citizens, via committees, to establish census tracts and other census statistical geographic areas. The committees created by local citizens were known as Census Tract Committees, later called Census Statistical Areas Committees.

After 1930, the Census Bureau saw the need to standardize the delineation, review, and updating of census tracts and published the first set of census tract criteria in 1934. The goal of the criteria has remained unchanged; that is, to assure comparability and data reliability through the standardization of the population thresholds for census tracts, as well as requiring that their boundaries follow specific types of geographic features that do not change frequently. The Census Bureau began publishing census tract data as part of its standard tabulations beginning with the 1940 Census. Prior to that time, census tract data were published as special tabulations.

For the 1940 Census, the Census Bureau began publishing census block data for all cities with 50,000 or more people. Census block numbers were assigned, where possible, by census tract, but for those cities that had not yet delineated census tracts, ''block areas'' (called ''block numbering areas'' [BNAs] in later censuses) were created to assign census block numbers.

Starting with the 1960 Census, the Census Bureau assumed a greater role in promoting and coordinating the delineation, review, and update of census tracts. For the 1980 Census, criteria for BNAs were changed to make them more comparable in size and shape to census tracts. For the 1990 Census, all counties contained either census tracts or BNAs.

Census 2000 was the first decade in which census tracts were defined in all counties. In addition, the Census Bureau increased the number of geographic areas whose boundaries could be used as census tract boundaries. It also allowed tribal governments of federally recognized American Indian tribes with a reservation and/or off-reservation trust lands to delineate tracts without regard to State and/or county boundaries, provided the tribe had a 1990 Census population of at least 1,000.

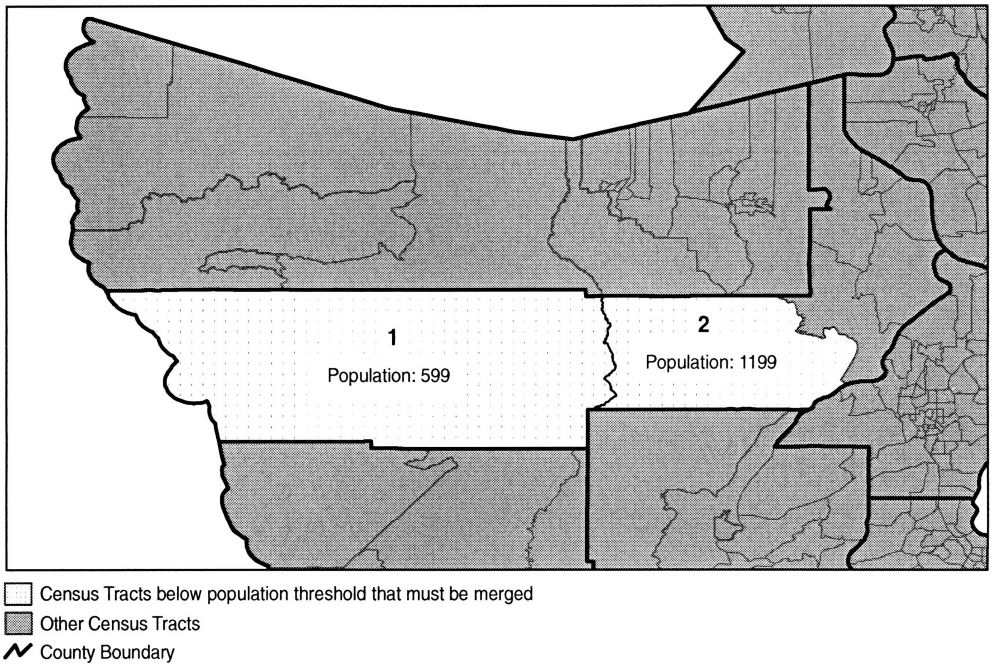
## II. General Principles and Criteria for Census Tracts for the 2010 Census

### *A. General Principles*

1. A century of census tract use has shown that continuity and comparability in tracts and their boundaries over time are of considerable importance to data users. Comparability has always been a goal in the census tract program since its inception for the 1910 census; however, as the use of tract data increases, the importance of comparability increases as well. Maintaining comparability of tract boundaries over time facilitates longitudinal data analysis. The advent of the ACS and the averaging of sample data for tracts over a five-year span further underscore the need for consistent tract boundaries over time.

Pursuant to this goal of continuity and comparability, the Census Bureau requests that where a census tract must be updated, for example to meet the minimum or maximum population or housing unit thresholds, that the outer boundaries of the tract not be changed, but rather that a tract be split into two or more tracts, or merged with an adjacent tract. The Census Bureau discourages changes to tract boundaries (that is, ''retracting''), except in specified circumstances, which the Census Bureau will review on a case-by-case basis.

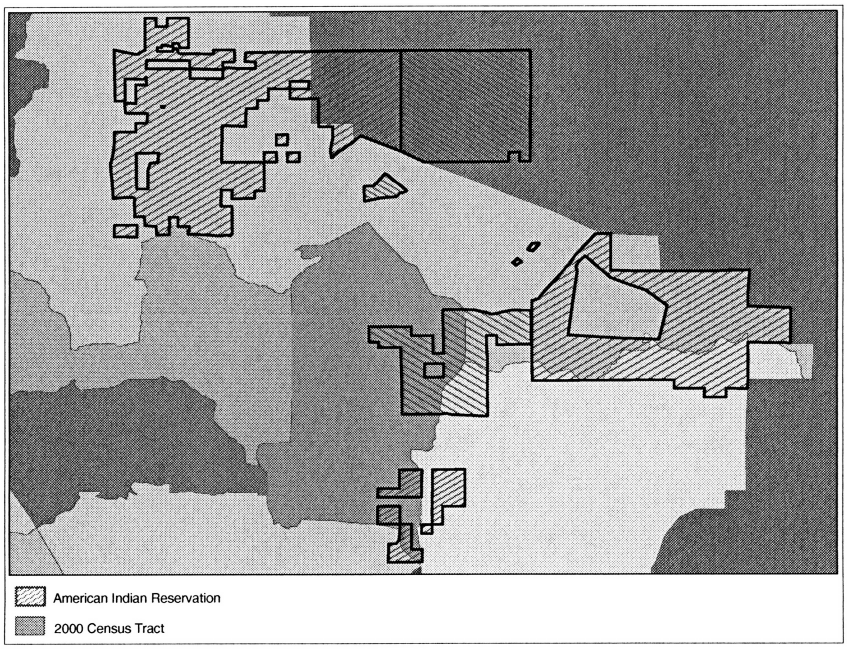
2. The sample size for the ACS is smaller than the sample from the decennial census long form of previous censuses. As a general rule, estimates from programs providing sample data, including the ACS, for geographic areas with smaller populations will be subject to higher variances than comparable estimates for areas with larger populations. In addition, the Census Bureau's disclosure rules may have the effect of restricting the availability and amount of sample data published for geographic areas with small populations. Aiming to create census tracts that meet the optimal population of 4,000 and maintaining minimum thresholds will improve the reliability and availability of data, and local governments and planners should consider these factors when defining their census tracts. Therefore, the Census Bureau proposes that any census tracts not flagged as a water body or special land use tract (General Principle 4) must encompass at least 1,200 people or at least 480 housing units. Any census tract with a population or housing unit count less than the minimum threshold should be merged with an adjacent census tract to form a single tract with at least 1,200 people or at least 480 housing units (Figure 1). The Census Bureau will use Census 2000 population and housing unit counts, with allowance made for growth since 2000, to assess whether each census tract submitted meets this criterion. Program participants may submit local estimates as a surrogate for the Census 2000 population and housing unit counts for a census tract.




3. With the advent of the ACS and the ''continuous measurement'' of characteristics of the population and housing based on a five-year average, there are some new issues to consider in the census tract criteria. The Census Bureau proposes the use of either population or housing units in the review of census tracts. The ACS is designed to produce local area data as of a 12-month period estimate (or an average); whereas, in the past local area data were represented as of the April 1 census day.

4. The Census Bureau recognizes that there are geographic areas that are not characterized by a residential population, and which local participants may wish to separate from populated tracts for analytical or cartographic purposes or both. The Census Bureau proposes identifying these areas as water body tracts and special land use tracts. Special land use tracts must be designated as a specific type of land use (e.g., State park, municipal park) and have an official name, generally have little or no residential population or housing units, and must not create a noncontiguous census tract. If located in a densely populated urban area, a special land use tract must have an area of approximately 1 square mile or more. If delineated completely outside an urban area, a special land use tract must have an area of approximately 10 square miles or more. The Census Bureau recognizes that some special land use areas not intended for residential population, such as parks, may contain some population, such as caretakers or the homeless. Our intent is to allow for the delineation of parks and other special land use areas as separate tracts and therefore will accept such areas as tracts even if some residential population is present.

5. To facilitate the analysis of data for American Indian tribes, and to recognize their unique governmental status, program participants are encouraged to merge, split, or redefine census tracts to avoid unnecessarily splitting American Indian reservations and/or off-reservation trust lands. Each contiguous American Indian reservation and/or off-reservation trust land should be included, along with any necessary territory outside the reservation and/or off-reservation trust land, within a single census tract or as few census tracts as possible for the 2010 Census. This is the only situation in which retracting is encouraged. See, for example, Figure 2 below.




*B. Changes to the Census Tract Criteria for the 2010 Census*

Most provisions of the census tract criteria for the 2010 Census would remain unchanged from those used in conjunction with Census 2000 with only the following exceptions:

1. The minimum population threshold for census tracts would be 1,200, lowered from the minimum threshold of 1,500 used in Census 2000. This change seeks to create a standard minimum threshold for census block groups and census tracts, in order to support the reliability and availability of sample data for these statistical geographies.

2. Housing unit counts may be used instead of population counts in the review and update of tracts. This change seeks to accommodate seasonal communities in which residents often are not present on the date of the decennial census, but will be present at other times of the year and for which estimates may be reflected in the ACS.

3. For Census 2000, minimum population thresholds for census tracts varied. The minimum population threshold for census tracts delineated on American Indian reservations and off-reservation trust lands was 1,000. This differed from the minimum threshold of 1,500 people for census tracts defined elsewhere in the United States, as well as in Puerto Rico and the Island Areas. Optimum populations for census tracts also varied: 4,000 in the United States and Puerto Rico, and 2,500 on American Indian reservations and in the Island Areas. The maximum population for a census tract in any of these areas was 8,000. In addition, for Census 2000, tracts that enclosed an institution, a military installation, or other ''special place'' had a minimum population requirement of 1,000 inhabitants, with no optimum or maximum.

For the 2010 Census the same population and housing unit thresholds would apply to all types of populated tracts, including census tracts delineated on American Indian reservations and off-reservation trust lands, the Island Areas, and encompassing group quarters, military installations, and institutions. The Census Bureau proposes this change in order to aid in the availability and reliability of data for all tracts and to create a single national standard.

4. The delineation of census tracts would be permitted, and encouraged, for the following types of geographic areas:

a. Large water bodies with areas of approximately 100 square miles or more.

b. Special land uses (for example, large airports, public parks, or public forests) with an official name.

The Census Bureau would require that special land use tracts have little or no residential population. All such census tracts would meet all other tract criteria.

5. A geographic framework of tribal tracts, separate from the standard census tracts defined within counties, may be defined within federally recognized American Indian reservations and/or off-reservation trust lands, subject to other population, housing, and boundary criteria contained in this document. This represents a change from the practice for Census 2000. The Census Bureau proposes this change to better recognize the unique statistical data needs of federally recognized American Indian tribes and their reservation and off-reservation trust lands.

*C. Census Tract Criteria for the 2010 Census*

The criteria proposed herein apply to the United States, including federally recognized American Indian reservations and off-reservation trust lands, Puerto Rico, and the Island Areas. The Census Bureau may modify and, if necessary, reject any proposals for census tracts that do not meet the established criteria. In addition, the Census Bureau reserves the right to modify the boundaries and attributes of tracts as needed to meet the published criteria and/or maintain geographic relationships before the final tabulation geography is set for the 2010 Census. The Census Bureau proposes the following criteria for use in reviewing 2010 Census tracts:

1. A census tract must comprise a reasonably compact and contiguous land area.

Noncontiguous boundaries are permitted only where a noncontiguous area or inaccessible area would not meet population or housing unit count requirements for a separate tract, in which case the noncontiguous or inaccessible area must be included within an adjacent or proximate tract. For example, an island that does not meet the minimum population

threshold for recognition as a separate tract should be combined with other proximate land to form a single tract. Each case will be reviewed and accepted at the Census Bureau's discretion.

2. A census tract must cover the entire land and water area of a county.

In counties containing coastal waters, territorial sea, and portions of the Great Lakes, and very large, contiguous, inland water bodies, a single water body tract should be created for each discrete water body to provide for complete census tract coverage.

3. Census tract boundaries should follow visible and identifiable features.

To make the location of census tract boundaries less ambiguous, wherever possible, tract boundaries should follow visible and identifiable features. The Census Bureau also permits the use of State and county boundaries in all States, and incorporated place and minor civil division boundaries in States where those boundaries tend to remain unchanged over time (see Table 1). The use of visible features also makes it easier to locate and identify tract boundaries over time, as the locations of many visible features in the landscape tend to change infrequently.

The following features are preferred as census tract boundaries for the 2010 Census:

a. State and county boundaries must always be tract boundaries. This criterion takes precedence over all other criteria or requirements except for the population threshold criteria for tribal tracts on American Indian reservations and/or off-reservation trust lands.

b. American Indian reservation and off-reservation trust land boundaries.

c. Visible, perennial natural and cultural features, such as roads, shorelines, rivers, perennial streams and canals, railroad tracks, or above-ground high-tension power lines.

d. Boundaries of legal and administrative entities in selected States. Table 1 identifies by State which minor civil division (MCD) and incorporated place boundaries may be used as tract boundaries.

TABLE 1.—ACCEPTABLE MCD AND INCORPORATED PLACE BOUNDARIES

| | All MCD boundaries | Boundaries of MCDs not coincident with the boundaries of incorporated places that themselves are MCDs | All incorporated place boundaries | Only conjoint incorporated places boundaries |
|---|---|---|---|---|
| Alabama | | | | X |
| Alaska | | | | X |
| Arizona | | | | X |
| Arkansas | | | | X |
| California | | | | X |
| Colorado | | | | X |
| Connecticut | X | | X | |
| Delaware | | | | X |
| Florida | | | | X |
| Georgia | | | | X |
| Hawaii | | | | X |
| Idaho | | | | X |
| Illinois | | X[a] | | X |
| Indiana | X | | | X |
| Iowa | | X | | X |
| Kansas | | X | | X |
| Kentucky | | | | X |
| Louisiana | | | | X |
| Maine | X | | X | |
| Maryland | | | | X |
| Massachusetts | X | | X | |
| Michigan | | X | | X |
| Minnesota | | X | | X |
| Mississippi | | | | X |
| Missouri | | X[b] | | X |
| Montana | | | | X |
| Nebraska | | X[a] | | X |
| Nevada | | | | X |
| New Hampshire | X | | X | |
| New Jersey | X | | X | |
| New Mexico | | | | X |
| New York | X | | X | |
| North Carolina | | | | X |
| North Dakota | | X | | X |
| Ohio | | X | | X |
| Oklahoma | | | | X |
| Oregon | | | | X |
| Pennsylvania | X | | X | |
| Rhode Island | X | | X | |
| South Carolina | | | | X |
| South Dakota | | X | | X |
| Tennessee | | | | X |
| Texas | | | | X |

TABLE 1.—ACCEPTABLE MCD AND INCORPORATED PLACE BOUNDARIES—Continued

| | All MCD boundaries | Boundaries of MCDs not coincident with the boundaries of incorporated places that themselves are MCDs | All incorporated place boundaries | Only conjoint incorporated places boundaries |
|---|---|---|---|---|
| Utah | | | | X |
| Vermont | X | | X | |
| Virginia | | | | X |
| Washington | | | | X |
| West Virginia | | | | X |
| Wisconsin | | X | | X |
| Wyoming | | | | X |

[a] Townships only.
[b] Governmental townships only.

e. Additionally, the following legally defined, administrative boundaries would be permitted as census tract boundaries:

i. Barrio, barrio-pueblo, and subbarrio boundaries in Puerto Rico;

ii. Census subdistrict boundaries in the U.S. Virgin Islands;

iii. County and island boundaries (both MCD equivalents) in American Samoa;

iv. Election district boundaries in Guam;

v. Municipal district boundaries in the Commonwealth of the Northern Mariana Islands; and

vi. Alaska Native regional corporation boundaries in Alaska, at the discretion of the Census Bureau, insofar as such boundaries are unambiguous for allocating living quarters as part of 2010 Census activities.

f. When acceptable visible and governmental boundary features are not available for use as tract boundaries, the Census Bureau may, at its discretion, approve other nonstandard visible features, such as ridge lines, above-ground pipelines, intermittent streams, or fence lines. The Census Bureau may also accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features, such as the boundaries of military installations, National Parks, National Monuments, National Forests, other types of parks or forests, airports, marine ports, cemeteries, golf courses, penitentiaries/prisons, or glaciers, or the straight-line extensions of visible features and other lines-of-sight.

g. The boundaries of large water bodies and special land use tracts, including parks, forests, large airports, and military installations, provided the boundaries are clearly marked or easily recognized.

4. Population, Housing Unit, and Area Thresholds

The Census Bureau proposes the following population, housing unit, and area threshold criteria for census tracts (as summarized in Table 2).

TABLE 2.—TRACT THRESHOLDS

| Tract type | Threshold type | Optimum | Minimum | Maximum |
|---|---|---|---|---|
| Standard & tribal tracts | Population threshold | 4,000 | 1,200 | 8,000 |
| | Housing Unit threshold | 1,600 | 480 | 3,200 |
| Water body tracts | Area threshold (square miles) | none | 100 | none |
| Special land use tracts | Area threshold for an urban area (square miles). | none | 1 | none |
| | Area threshold outside an urban area (square miles). | none | 10 | none |

a. Population counts should be used in tract review in most cases. Housing unit counts should be used for seasonal communities that have no or low population on census day (April 1). Locally produced population and housing unit estimates can be used when reviewing and updating tracts, especially in areas that have experienced considerable growth since Census 2000.

b. The housing unit thresholds are based on a national average of 2.5 persons per household. The Census Bureau recognizes that there are regional variations to this average and will take this into consideration when reviewing all tract proposals.

c. The Census Bureau recognizes the tension that exists between meeting the optimum population or housing unit threshold in a tract and maintaining tract comparability over time. For example, if population growth has occurred since 2000 or is expected before 2010 for a census tract, the tract should not be merged if it has a Census 2000 population of at least 1,100 or a housing unit count of at least 440 and acceptable supporting evidence is supplied by the PSAP participant that population and/or housing unit growth has occurred since Census 2000, or will likely occur before 2010, and has been sufficient to meet the minimum thresholds. However, should the census tract's population not increase as expected and does not meet either of the minimum thresholds in 2010, this may adversely affect the reliability and availability of any sample estimates for that tract. For this reason, the Census Bureau suggests merging the census tract with another if there is a possibility that anticipated growth will not be sufficient to meet minimum thresholds.

d. The Census Bureau may waive the maximum population and housing thresholds as required to achieve the objectives of this notice.

e. For the 2010 Census, the Census Bureau encourages the delineation of special-use tracts in specific types of areas.

i. A special land use tract must be designated as a specific land use type (e.g., State park), must have an official name (e.g., Jay Cooke State Park), have little or no residential population, and must not create a noncontiguous tract. In some instances, multiple areas can be combined to form a single special land-use tract if the land management characteristics are similar, such as a special land-use tract comprising adjacent Federal and State parks. If the special land use tract is delineated in a densely populated, urban area, the tract must have an area of approximately one square mile or more. If the special land-use tract is delineated completely outside an urban area, the tract must have an area of approximately 10 square miles or more.

ii. A water body tract must encompass all or part of a territorial sea, coastal water, a Great Lake, or an inland water body at least 100 square miles in area. If a water body meets this criterion and is in more than one county, each county can delineate a tract for its portion of the water body. Any islands within a qualifying water body should be included within a separate tract.

5. Identification of Census Tracts

a. A census tract has a basic census tract identifier composed of no more than four digits and may have a two-digit decimal suffix.

b. The range of acceptable basic census tract identifiers for the 2010 Census is from 1 to 9949 (but, see 5.c. below); tracts delineated specifically to complete coverage of large water bodies will be numbered from 9950 to 9989 in each county. All other tracts that fall within the 9950–9989 range must be renumbered. For Census 2000, water body tracts were all coded 0000. Each of these must be renumbered for the 2010 Census.

c. Census tracts delineated within or to primarily encompass American Indian reservations and/or off-reservation trust lands can continue to be numbered from 9400 to 9499. Local participants may opt to renumber these census tracts in a numeric range consistent with the rest of the county since tribal tracts are proposed to be a separate and distinct geographic entity.

d. Census tract identifiers must be unique within each county.

e. Once used, census tract identifiers cannot be reused in a subsequent census to reference a completely different area within a county. If a tract is split, each portion may keep the same basic 4-digit identifier, but each portion must be given a unique suffix. If a census tract that was suffixed for Census 2000 is split, each portion must be given a new suffix.

f. The range of acceptable census tract suffixes is .01 to .98.

6. Census Tract types

Table 3 below contains a summary of the types of census tracts (with their respective population, housing unit and area characteristics) that the Census Bureau proposes to use for the 2010 Census.

TABLE 3.—SUMMARY OF CENSUS TRACT TYPES

| | How distinct from standard census tracts | Population thresholds | Housing unit thresholds | Area thresholds |
|---|---|---|---|---|
| Standard & tribal tracts. | Tribal tracts are conceptually similar and equivalent to census tracts defined within the standard State-county-tract-block group geographic hierarchy used for tabulating and publishing statistical data. | Optimum: 4,000; ... Minimum: 1,200; ... Maximum: 8,000 ... | Optimum: 1,600; Minimum: 480; ..... Maximum: 3,200 ... | None. |
| Water body tract .... | A tract encompassing all or part of a territorial sea, coastal water, a Great Lake, or an inland water body at least 100 square miles in area. | Zero ..... | Zero ..... | 100 square miles if an inland water body. |
| Special land-use tract. | A tract encompassing a large airport, public park, or public forest with little or no population or housing units. In a densely populated, urban area, a special land use tract should be approximately 1 square mile in area or greater. If delineated completely outside an urban area, a special land-use tract should have an area of 10 square miles or greater. | Little or none ..... | Little or none ..... | 1 square mile within an urban area/10 square miles outside an urban area. |

*D. Tribal Tracts*

Tribal tracts are statistical geographic entities defined by the Census Bureau in cooperation with tribal officials to provide meaningful, relevant, and reliable data for small geographic areas within the boundaries of federally recognized American Indian reservation and/or off-reservation trust lands. As such, they recognize the unique statistical data needs of federally recognized American Indian tribes. The delineation of tribal tracts allows for an unambiguous presentation of tract-level data specific to the American Indian reservations and/or off-reservation trust lands without the imposition of State or county boundaries, which might artificially separate American Indian populations located within a single reservation and/or off-reservation trust land. To this end, the American Indian tribal participant may define tribal tracts that cross county or State boundaries, or both. For federally recognized American Indian tribes with reservations and/or off-reservation trust lands that have more than 2,400 residents, the Census Bureau will offer the tribal government the opportunity to delineate tribal tracts and other tribal statistical geography on their reservation and/or off-reservation trust land. For federally recognized tribes with an American Indian reservation and/or off-reservation trust

lands that have fewer than 2,400 residents, the Census Bureau will define one tribal tract and one tribal block group coextensive with the reservation and/or off-reservation trust land. Tribal tracts must be delineated to meet all other census tract criteria, and must be numbered uniquely so as to clearly distinguish them from county-based census tracts. Tribal tracts are conceptually similar and equivalent to census tracts defined within the standard State-county-tract-block group geographic hierarchy used for tabulating and publishing statistical data.

In order to provide meaningful statistical geographic areas within the reservation and/or off-reservation trust land as well as to make meaningful and reliable data available for these areas and their populations, the Census Bureau proposes that for the 2010 Census, standard census tracts be delineated nationwide, and the tribal tract geography be maintained separately and defined through a separate program designed specifically for tribal statistical geography. This differs from the procedure for Census 2000 in which tribal tracts were defined for federally recognized American Indian reservations and/or off-reservation trust lands and standard census tracts were identified by superimposing county and State boundaries onto the tribal tracts.

For Census 2000 products in which data were presented by State and county, the standard State-county-census tract hierarchy was maintained, even for territory contained within an American Indian reservation and/or off-reservation trust land. In such instances, the State/county portions of a tribal tract were identified as individual census tracts. These standard census tracts may not have met the minimum population or housing unit thresholds, therefore potentially limiting sample data reliability or availability for both the tribal tract and the derived standard tracts. The proposed change in the tribal tract program for the 2010 Census, creating standard, county-based census tracts nationwide and maintaining tribal tracts as a completely separate set of geography from standard tracts for both geographic information and data presentation purposes, seeks to eliminate, in part, these issues that existed with Census 2000 data.

As with standard census tracts submitted through this program, the tribal tracts would be submitted to the Census Bureau, and would be subject to review to ensure compliance with the final published criteria. Tribal tracts will be defined as part of a separate Tribal Statistical Areas Program (TSAP) for the 2010 Census. Detailed criteria pertaining to tribal tracts will be published in a separate **Federal Register** notice pertaining to all American Indian statistical areas defined through the TSAP.

## III. Definitions of Key Terms

Alaska Native regional corporation (ANRC)—A corporate geographic area established under the Alaska Native Claims Settlement Act (Pub. L. 92–203) to conduct both the business and nonprofit affairs of Alaska Natives. Twelve ANRCs cover the entire State of Alaska except for the Annette Island Reserve.

American Indian off-reservation trust land—A federally recognized American Indian land area located outside the boundaries of an American Indian reservation whose boundaries are established by deed and over which a federally recognized American Indian tribal government has governmental authority.

American Indian reservation (AIR)—A federally recognized American Indian land area with boundaries established by final treaty, statute, executive order, and/or court order and over which a federally recognized American Indian tribal government has governmental authority. Along with reservation, designations such as colonies, communities, pueblos, rancherias, and reserves apply to AIRs.

Coastal water—Water bodies between territorial seas and inland water, the encompassing headlands being more than one mile apart and less than 24 miles apart.

Conjoint—A description of a boundary shared by two adjacent geographic entities.

Contiguous—A description of areas sharing common boundaries, such that the areas, when combined, form a single piece of territory. Noncontiguous areas form disjoint pieces.

Great Lakes' waters—Water area beyond one mile wide headland embayments located in any of the five Great Lakes: Erie, Huron, Michigan, Ontario, or Superior.

Group quarters—A place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other. Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

Incorporated place—A type of governmental unit, incorporated under State law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, generally to provide governmental services for a concentration of people within legally prescribed boundaries.

Inland water—Water bodies entirely surrounded by land or at the point where their opening to coastal waters, territorial seas, or the Great Lakes is less than one mile across.

Minor civil division (MCD)—The primary governmental or administrative division of a county in 28 States and the Island Areas having legal boundaries, names, and descriptions. The MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the State and type of MCD. In some States, some or all of the incorporated places also constitute MCDs.

Nonvisible feature—A map feature that is not visible on the ground such as a city or county boundary through space, a property line, or line-of-sight extension of a road.

Retracting—Substantially changing the boundaries of a tract so that comparability over time is not maintained.

Special land use tract—Type of census tract that must be designated as a specific land use type (e.g., State park) and have an official name (e.g., Jay Cooke State Park), must have little or no residential population or housing units, and must not create a noncontiguous tract. If delineated in a densely populated, urban area, a special land use tract must have an area of approximately one square mile or more. If delineated completely outside an urban area, a special land use tract must have an area of approximately 10 square miles or more.

Territorial seas—Water bodies not included under the rules for inland water, coastal water, or Great Lakes' waters, see above.

TIGER®—Topologically Integrated Geographic Encoding and Referencing database developed by the Census Bureau to support its mapping needs for the decennial census and other Census Bureau programs. The topological structure of the TIGER® database defines the location and relationship of boundaries, streets, rivers, railroads, and other features to each other and to the

numerous geographic areas for which the Census Bureau tabulates data from its censuses and surveys.

Visible feature—A map feature that can be seen on the ground such as a road, railroad track, major above-ground transmission line or pipeline, river, stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features used as boundaries for the PSAP geographic areas pose no problem in their location during field work.

Water body tract—Type of tract encompassing territorial seas, coastal water, the Great Lakes, or inland water at least 100 square miles in area. If an inland water body meets this criterion, each county can delineate a tract for its portion of the water body.

**Executive Order 12866**

This notice has been determined to be not significant under Executive Order 12866.

**Paperwork Reduction Act**

This program notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Dated: April 3, 2007.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. E7–6466 Filed 4–5–07; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket Number 070126022–0723–01]**

### Census Block Group Program for the 2010 Census—Proposed Criteria

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of proposed program revisions and request for comments.

**SUMMARY:** Block groups are statistical geographic divisions of a census tract, defined for the tabulation and dissemination of decennial census data. Block groups also will be used to tabulate and publish estimates from the American Community Survey (ACS) [1] after 2010. Each block group comprises a reasonably compact and contiguous cluster of census blocks; up to nine block groups can be contained within a single census tract.

Most provisions of the block group criteria for the 2010 Census remain unchanged from those used in conjunction with Census 2000. However, based on consultation with data users and internal review, the Bureau of the Census (Census Bureau) is proposing the following changes for the 2010 Census: (1) Increasing the minimum population and housing unit counts for block groups; (2) using housing unit counts (as an alternative to population counts) in the delineation of block groups; (3) applying the same population and housing unit thresholds to all types of populated block groups in the United States,[2] including block groups delineated on American Indian reservations and/or off-reservation trust lands,[3] the Island Areas,[4] and encompassing group quarters, military installations, and institutions; (4) allowing the delineation of block groups for large water bodies with areas of approximately 100 square miles or more and special land uses (*e.g.*, large airports or public parks) with an official name; and (5) allowing for geographic frameworks of tribal block groups (separate from the standard block groups defined within counties and standard census tracts) to be defined within federally-recognized American Indian reservations and/or off-reservation trust lands.

In addition to the proposed criteria, this notice includes a description of the changes from the criteria used for Census 2000 and a list of definitions of key terms used in the criteria.

The Census Bureau is publishing this notice in the **Federal Register** to request comments from the public and other government agencies. The Census Bureau will respond to the comments received as part of the publication of final criteria in the **Federal Register**. After the final criteria are published in the **Federal Register**, the Census Bureau will offer designated governments or organizations an opportunity to review and, if necessary, suggest updates to the boundaries and attributes of the block groups in their geographic area under the Participant Statistical Areas Program (PSAP). In addition to block groups, the program also encompasses the review and update of census tracts, census designated places, and census county divisions.

**DATES:** Written comments must be submitted on or before July 5, 2007.

**ADDRESSES:** Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, Room 8H001, Mail Stop 0100, Washington, DC 20233–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on this proposed program should be directed to Michael Ratcliffe, Chief, Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *geo.psap.list@census.gov* or telephone at 301–763–3056.

**SUPPLEMENTARY INFORMATION:**

### I. History of Block Groups

The Census Bureau first delineated block groups as statistical geographic divisions of census tracts for the 1970 Census, comprising contiguous combinations of census blocks for data presentation purposes. At that time, census block groups only existed in urbanized areas in which census blocks were defined. Block groups were defined without regard to political and administrative boundaries, with an average population of 1,000, and to be approximately equal in area.

As census block, block group, and census tract data were used increasingly by data users, the Census Bureau expanded these programs to cover additional geographic areas, while redefining the population threshold criteria to more adequately suit data users' needs. The 1990 Census was the first in which census blocks and block groups were defined throughout the entirety of the United States, Puerto Rico, and the Island Areas. For Census 2000, as with census tracts, the Census Bureau increased the number of geographic areas whose boundaries could be used as block group boundaries, and allowed tribal governments of federally recognized

[1] The ACS is conducted in the United States and in Puerto Rico. In Puerto Rico, the survey is called the Puerto Rico Community Survey. For ease of discussion, throughout this document the term ACS is used to represent both the survey that is conducted in the United States and in Puerto Rico.

[2] For Census Bureau purposes, the United States includes the fifty states and the District of Columbia.

[3] The proposed criteria for the tribal statistical areas program will be outlined in a separate **Federal Register** notice. In the tribal statistical areas program, federally recognized American Indian tribes that have a reservation and/or off-reservation trust land may delineate census designated places and, if these areas have a population of 2,400 or greater, may delineate tribal tracts and tribal block groups for their reservation and off-reservation trust land.

[4] For Census Bureau purposes, the Island Areas includes American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the U.S. Minor Outlying Islands. The U.S. Minor Outlying Islands is an aggregation of nine U.S. territories: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

American Indian tribes with a reservation and/or off-reservation trust lands to delineate block groups without regard to state and/or county boundaries, provided the tribe had a 1990 Census population of at least 1,000.

## II. General Principles and Criteria for Block Groups for the 2010 Census

### *A. General Principles*

1. Block groups are statistical geographic divisions of a census tract, defined by the Census Bureau in cooperation with local officials and organizations, for the tabulation and dissemination of decennial census data as well as period estimates of demographic and housing characteristics from the ACS.

2. Because block groups are used to present and analyze sample-based statistical data, the amount of population or housing units within a block group is an important consideration. As a general rule, estimates from programs providing sample data, including the ACS, for geographic areas with smaller populations are subject to higher variances than comparable estimates for areas with larger populations. Aiming to create block groups that fall between the minimum and maximum thresholds will improve the reliability and availability of data, and local governments and planners should consider these factors when defining their block groups.

3. Block groups form the geographic framework within which the Census Bureau defines census blocks for use in tabulating and presenting decennial census data. Census blocks are numbered within block groups.

4. Geographic areas that are not characterized by a residential population, such as parks, large industrial areas, and water bodies, and which local participants may wish to separate from populated census tracts for analytical or cartographic purposes, or both, may be identified as individual block groups.

### *B. Proposed Changes to the Block Group Criteria for the 2010 Census*

Most provisions of the block group criteria for the 2010 Census would remain unchanged from those used in conjunction with Census 2000 with the following exceptions:

1. The Census Bureau proposes to increase the minimum population and housing unit counts for block groups to 1,200 and 480, respectively, to support block group sample data reliability and availability and to lower the variance of the sample data. The sample size for the ACS is smaller than the sample from the decennial census long form of previous censuses. As a general rule, estimates from programs providing sample data, including the ACS, for geographic areas with smaller populations will be subject to higher variances than comparable estimates for areas with larger populations. In addition, the Census Bureau's disclosure rules will have the effect of restricting the availability and amount of data for areas with small populations. Aiming to create block groups that fall between the minimum and maximum thresholds will improve the reliability and availability of data, and local governments and planners should consider these factors when defining their block groups.

2. Housing unit counts may be used instead of population counts in the delineation of block groups. This change seeks to accommodate seasonal communities in which residents may not be present on the date of the decennial census, but will be present at other times of the year and for which data may be reflected in the ACS.

3. For Census 2000, minimum population thresholds for block groups varied. The minimum population threshold for block groups delineated on American Indian reservations and off-reservation trust lands was 300. This differed from the minimum threshold of 600 people for block groups defined elsewhere in the United States, as well as in Puerto Rico and the Island Areas. The maximum population for a block group in any of these areas was 3,000. In addition, for Census 2000, block groups that enclosed an institution, a military installation, or other ''special place'' had a minimum population requirement of 300 inhabitants, with no optimum or maximum population.

For the 2010 Census, the same population and housing unit thresholds (minimum: 1,200 inhabitants or 480 housing units; maximum: 3,000 inhabitants or 1,200 housing units) would apply to all types of populated block groups, including block groups delineated for American Indian reservations and off-reservation trust lands, the Island Areas, and encompassing group quarters, military installations, and institutions. The Census Bureau proposes this change in order to aid in the availability and reliability of data for all block groups and to create a single national standard.

4. The delineation of block groups would be permitted, and encouraged, for the following specific types of geographic areas:

a. Large water bodies with areas of approximately 100 square miles or more.

b. Special land uses (e.g., large airports, public parks, or public forests) with an official name.

A single water body or special land use block group will be delineated to be coextensive with, or covering the same territory as, the water body or special land use tract in which it is located.

The Census Bureau would require that block groups delineated to encompass large water bodies and special land uses have little or no residential population. The Census Bureau recognizes that some special land use areas not generally intended for residential population, such as parks, may contain some population, such as caretakers or the homeless. Our intent is to allow for the delineation of parks and other special land use areas as separate block groups and, therefore, will accept such areas as block groups even if some residential population is present. All such block groups would meet all other block group criteria.

5. A geographic framework of tribal block groups, separate from the standard block groups defined within counties, may be defined within federally recognized American Indian reservations and/or off-reservation trust lands, subject to other population, housing, and boundary criteria contained in this document. This represents a change from the practice for Census 2000. The Census Bureau proposes this change to better recognize the unique statistical data needs of federally recognized American Indian tribes and their reservation and off-reservation trust lands.

### *C. Block Group Criteria for the 2010 Census*

The criteria proposed herein apply to the United States, including federally recognized American Indian reservations and off-reservation trust lands, Puerto Rico, and the Island Areas. In accordance with the final criteria, the Census Bureau may modify and, if necessary, reject any proposals for block groups that do not meet the established criteria. In addition, the Census Bureau reserves the right to modify the boundaries and attributes of block groups as needed to meet the published criteria and/or maintain geographic relationships before the final tabulation geography is set for the 2010 Census.

The Census Bureau proposes the following criteria for use in delineating 2010 Census block groups.

1. A block group must comprise a reasonable compact, contiguous land area.

Noncontiguous boundaries are permitted only where a contiguous area or inaccessible area would not meet population or housing unit count requirements for a separate block group, in which case the noncontiguous or inaccessible area must be combined within an adjacent or proximate block group. For example, an island that does not meet the minimum population threshold for recognition as a separate block group should be combined with other proximate land to form a single block group. Each case will be reviewed and accepted at the Census Bureau's discretion.

2. Block groups must not cross census tract boundaries.

This criterion supersedes all population and housing unit requirements or guidelines. By extension, because census tracts cannot cross county and state boundaries, neither can block groups. It is only permissible to define a standard block group with less than 1,200 people in a county that has a population less than 1,200.

3. Block groups must cover the entire land and water area of each census tract.

Because census tracts must cover the entire area of a county, by definition block groups also must cover the entire area of each county. In counties containing coastal waters, territorial sea, and portions of the Great Lakes, and very large, contiguous, inland water bodies, a single water body tract and a coextensive block group should be created for each discrete water body to provide for complete census block group coverage.

4. Block group boundaries should follow visible and identifiable features.

To make the location of block group boundaries less ambiguous, wherever possible, block group boundaries should follow visible and identifiable features. The Census Bureau also permits the use of state and county boundaries in all states and incorporated place and minor civil division boundaries in states where those boundaries tend to remain unchanged over time (see Table 1). The use of visible features also makes it easier to locate and identify block group boundaries over time as the locations of many visible features in the landscape tend to change infrequently.

The following features are preferred as block group boundaries for the 2010 Census:

a. State, county, and census tract boundaries must always be block group boundaries. This criterion takes precedence over all other criteria or requirements.

b. American Indian reservation and off-reservation trust land boundaries.

c. Visible, perennial natural and cultural features, such as roads, shorelines, rivers, perennial streams and canals, railroad tracks, or above-ground high-tension power lines.

d. Boundaries of legal and administrative entities in selected states. Table 1 identifies by state which minor civil division (MCD) and incorporated place boundaries may be used as block group boundaries.

TABLE 1.—ACCEPTABLE MCD AND INCORPORATED PLACE BOUNDARIES

| Boundaries | All MCD boundaries | Boundaries of MCDs not coincident with the boundaries of incorporated places that themselves are MCDs | All incorporated place boundaries | Only conjoint incorporated place boundaries |
|---|---|---|---|---|
| Alabama | | | | X |
| Alaska | | | | X |
| Arizona | | | | X |
| Arkansas | | | | X |
| California | | | | X |
| Colorado | | | | X |
| Connecticut | X | | X | |
| Delaware | | | | X |
| Florida | | | | X |
| Georgia | | | | X |
| Hawaii | | | | X |
| Idaho | | | | X |
| Illinois | | X[a] | | X |
| Indiana | X | | | X |
| Iowa | | X | | X |
| Kansas | | X | | X |
| Kentucky | | | | X |
| Louisiana | | | | X |
| Maine | X | | X | |
| Maryland | | | | X |
| Massachusetts | X | | X | |
| Michigan | | X | | X |
| Minnesota | | X | | X |
| Mississippi | | | | X |
| Missouri | | X[b] | | X |
| Montana | | | | X |
| Nebraska | | X[a] | | X |
| Nevada | | | | X |
| New Hampshire | X | | X | |
| New Jersey | X | | X | |
| New Mexico | | | | X |
| New York | X | | X | |
| North Carolina | | | | X |

TABLE 1.—ACCEPTABLE MCD AND INCORPORATED PLACE BOUNDARIES—Continued

| Boundaries | All MCD boundaries | Boundaries of MCDs not coincident with the boundaries of incorporated places that themselves are MCDs | All incorporated place boundaries | Only conjoint incorporated place boundaries |
|---|---|---|---|---|
| North Dakota | | X | | X |
| Ohio | | X | | X |
| Oklahoma | | | | X |
| Oregon | | | | X |
| Pennsylvania | X | | X | |
| Rhode Island | X | | X | |
| South Carolina | | | | X |
| South Dakota | | X | | X |
| Tennessee | | | | X |
| Texas | | | | X |
| Utah | | | | X |
| Vermont | X | | X | |
| Virginia | | | | X |
| Washington | | | | X |
| West Virginia | | | | X |
| Wisconsin | | X | | X |
| Wyoming | | | | X |

[a] Townships only.
[b] Governmental townships only.

e. Additionally, the following legally defined, administrative boundaries would be permitted as block group boundaries:

i. Barrio, barrio-pueblo, and subbarrio boundaries in Puerto Rico;

ii. Census subdistrict boundaries in the U.S. Virgin Islands;

iii. County and island boundaries (both MCD equivalents) in American Samoa;

iv. Election district boundaries in Guam;

v. Municipal district boundaries in the Commonwealth of the Northern Mariana Islands; and

vi. Alaska Native regional corporation boundaries in Alaska, at the discretion of the Census Bureau, insofar as such boundaries are unambiguous for allocating living quarters as part of 2010 Census activities.

f. When acceptable visible and governmental boundary features are not available for use as block group boundaries, the Census Bureau may, at its discretion, approve other nonstandard visible features, such as ridge lines, above-ground pipelines, intermittent streams, or fence lines. The Census Bureau may also accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features, such as the boundaries of military installations, National Parks, National Monuments, National Forests, other types of parks or forests, airports, marine ports, cemeteries, golf courses, penitentiaries/prisons, glaciers, or the straight-line extensions of visible features and other lines-of-sight.

g. The boundaries of large water bodies and special land use tracts, including parks, forests, and military installations, provided the boundaries are clearly marked or easily recognized.

5. Population, Housing Unit, and Area Thresholds

The Census Bureau proposes the following population, housing unit, and area threshold criteria for census block group (as suggested in Table 2). Any block group that does not meet the minimum population or housing unit threshold must be revised.

TABLE 2.—BLOCK GROUP THRESHOLDS

| Block group type | Threshold type | Minimum | Maximum |
|---|---|---|---|
| Standard & tribal block groups | Population threshold | 1,200 | 3,000 |
| | Housing Unit threshold | 480 | 1,200. |
| Water body block groups | Area threshold (square miles) | 100 | none |
| Special land use block groups | Area threshold for an urban area (square miles) | 1 | none |
| | Area threshold outside an urban area (square miles) | 10 | none |

a. Census 2000 population counts should be used in census block group review in most cases. Housing unit counts should be used for block groups in seasonal communities that have no or low population on census day (April 1). Locally produced population and housing unit estimates can be used when reviewing and updating block groups, especially in areas that have experienced considerable growth since Census 2000.

b. The housing unit thresholds are based on a national average of 2.5 persons per household. The Census Bureau recognizes that there are regional variations to this average, and will take this into consideration when reviewing all census block group proposals.

c. For the 2010 Census, the Census Bureau encourages the delineation of special use census tracts, hence special use block groups, in specific types of areas:

i. A special land use block group must be designated as a specific land use type (e.g. state park), must have an official name (e.g., Jay Cooke State Park), have little or no residential population, and must not create a noncontiguous block group. In some instances, multiple areas can be combined to form a single special land use block group if the land management characteristics are similar, such as a special land use block group comprising adjacent federal and state parks. If the special land use block group is delineated in a densely populated, urban area, the block group must have an area of approximately one square mile or more. If the special land use block group is delineated completely outside an urban area, the block group must have an area of approximately 10 square miles or more.

ii. A water body block group must encompass all or part of a territorial sea, coastal water, a Great Lake, or an inland water body at least 100 square miles in area. If an inland water body meets this criterion and is in more than one county, each county can delineate a block group for its portion of the water body. Any islands within a qualifying water body should be included within a separate block group.

6. Identification of Block Groups

a. A block group encompasses a cluster of census blocks. Each block group is identified using a single-digit number that will correspond to the first digit in the number of each block that comprises it. For example, census block group 3 includes all census blocks numbered in the 3000 range within a single census tract.

b. The range of acceptable block group numbers is 1 through 9. Block group numbers must always be unique within a census tract.

7. Block Group Types

TABLE 3.—TABLE 3 BELOW CONTAINS A SUMMARY OF THE TYPES OF BLOCK GROUPS (WITH THEIR RESPECTIVE POPULATION, HOUSING UNIT AND AREA CHARACTERISTICS) THAT THE CENSUS BUREAU PROPOSES TO USE FOR THE 2010 CENSUS. SUMMARY OF BLOCK GROUP TYPES

| | How distinct from standard block groups | Population thresholds | Housing unit thresholds | Area thresholds |
|---|---|---|---|---|
| Standard & tribal block groups. | Tribal block groups are conceptually similar and equivalent to census block groups defined within the standard state-county-tract-block group geographic hierarchy used for tabulating and publishing statistical data. | Minimum: 1,200; Maximum: 3,000. | Minimum: 480; Maximum: 1,200. | none. |
| Water body block groups. | A block group coextensive with a water body tract, encompassing all or part of a territorial sea, coastal water, a Great Lake, or an inland water body at least 100 square miles area. | Zero | Zero | 100 square miles if an inland water body. |
| Special land use block groups. | A block group coextensive with a special land use tract, encompassing a large airport, public park, or public forest with little or no population or housing units. In a densely populated, urban area, a special land use block group must be approximately one square mile in area or greater. If delineated completely outside an urban area, a special land use block group must have an area of ten square miles or greater. | Little or none | Little or none | one square mile within an urban area/ten square miles outside an urban area. |

*D. Tribal Block Groups*

Tribal block groups are statistical geographic entities defined by the Census Bureau in cooperation with tribal officials to provide meaningful, relevant, and reliable data for small geographic areas within the boundaries of federally recognized American Indian reservations and/or off-reservation trust lands. As such, they recognize the unique statistical data needs of federally recognized American Indian tribes. The delineation of tribal block groups allows for an unambiguous presentation of statistical data specific to a federally recognized reservation and/or off-reservation trust lands without the imposition of state or county boundaries, which might artificially separate American Indian populations located within a single reservation and/or off-reservation trust land. To this end, the American Indian tribal participant [5] may define tribal block groups that cross county or state boundaries, or both. Tribal block groups must be delineated to meet all other census block group criteria, and must be numbered uniquely so as to clearly distinguish them from county-based block groups. Tribal block group boundaries will be held as census block boundaries. Census blocks, however, will be numbered uniquely within county-based block groups. Tribal block groups are conceptually similar and equivalent to census block groups defined within the standard state-county-tract-block group geographic hierarchy used for tabulating and publishing statistical data.

In order to provide meaningful statistical geographic areas within the reservation and/or off-reservation trust land, as well as make meaningful and reliable data available for these areas and their populations, the Census Bureau proposes that for the 2010 Census, standard block groups be delineated nationwide, and the tribal

[5] For federally recognized American Indian tribes with reservations and/or off-reservation trust lands that have more than 2,400 residents, the Census Bureau will offer the tribal government the opportunity to delineate tribal block groups and other tribal statistical geography on their reservation and/or off-reservation trust land. For federally recognized tribes with an American Indian reservation and/or off-reservation trust land that have fewer than 2,400 residents, the Census Bureau will define one tribal tract and one tribal block group coextensive with the American Indian reservation and/or off-reservation trust land.

block group geography be maintained separately, and defined through a separate program designed specifically for tribal statistical geography. This differs from the procedure for Census 2000 in which tribal block groups were defined for federally recognized American Indian reservations and/or off-reservation trust lands, and standard block groups were identified by superimposing county and state boundaries onto the tribal block groups.

For Census 2000 products in which data were presented by state and county, the standard state-county-census tract-block group hierarchy was maintained, even for territory contained within an American Indian reservation and/or off-reservation trust land. In such instances, the state/county portions of tribal block groups were identified as individual block groups, and these standard block groups may not have met the minimum population or housing unit thresholds, potentially limiting sample data reliability or availability for both the tribal block group and the derived standard block groups. The proposed change in the tribal block group program for the 2010 Census, creating standard block groups nationwide and maintaining tribal block groups as a completely separate set of geography from standard block groups in both geographic and data presentation purposes, seeks to eliminate, in part, these data issues from Census 2000.

As with standard block groups submitted through the program, the tribal block groups would be submitted to the Census Bureau, and would be subject to review to ensure compliance with the final published criteria. Tribal block groups will be defined as part of a separate Tribal Statistical Areas Program (TSAP) for the 2010 Census. Detailed criteria pertaining to tribal block groups will be published in a separate **Federal Register** notice pertaining to all American Indian statistical areas defined through the TSAP.

**III. Definitions of Key Terms**

Alaska Native regional corporation (ANRC)—A corporate geographic area established under the Alaska Native Claims Settlement Act (Pub. L. 92–203), to conduct both, the business and nonprofit affairs of Alaska Natives. Twelve ANRCs cover the entire State of Alaska except for the Annette Island Reserve.

American Indian off-reservation trust land (ORTL)—A federally recognized American Indian land area located outside the boundaries of an American Indian reservation whose boundaries are established by deed and over which a federally recognized American Indian tribal government has governmental authority.

American Indian reservation (AIR)—A federally recognized American Indian land area with boundaries established by final treaty, statute, executive order, and/or court order and over which a federally recognized American Indian tribal government has governmental authority. Along with reservation, designations such as colonies, communities, pueblos, rancherias, and reserves apply to AIRs.

Coastal water—Water bodies between territorial seas and inland water, the encompassing headlands being more than one mile apart and less than 24 miles apart.

Conjoint—A description of a boundary shared by two adjacent geographic entities.

Contiguous—A description of areas sharing common boundaries, such that the areas, when combined, form a single piece of territory. Noncontinuous areas form disjoint pieces.

Great Lakes' waters—Water area beyond one mile wide headland embayments located in any of the five Great Lakes: Erie, Huron, Michigan, Ontario, or Superior.

Group quarters (GQ)—A place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care, as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other. Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

Incorporated place—A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, generally to provide governmental services for a concentration of people within legally prescribed boundaries.

Inland water—Water bodies entirely surrounded by land or at the point where their opening to coastal waters, territorial seas, or the Great Lakes is less than one mile across.

Minor civil division (MCD)—The primary governmental or administrative division of a county in 28 states and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

Nonvisible feature—A map feature that is not visible on the ground, such as a city or county boundary through space, a property line, line-of-sight extension of a road.

Special land use block group—Block group delineated coextensive with, or covering the same area as, the special land use tract.

Special land use tract—Type of census tract that must be designated as a specific land use type (e.g. state park) and have an official name (e.g., Jay Cooke State Park), must have little or no residential population or housing units, and must not create a noncontiguous census tract. If delineated in a densely populated, urban area, a special land use tract must have an area of approximately one square mile or more. If delineated completely outside an urban area, a special land use tract must have an area of approximately 10 square miles or more.

Territorial seas—Water bodies not included under the definition for inland water, coastal water, or Great Lakes' waters, see above.

TIGER—Topologically Integrated Geographic Encoding and Referencing database developed by the Census Bureau to support its mapping needs for the Decennial Census and other Census Bureau programs. The topological structure of the TIGER database defines the location and relationship of boundaries, streets, rivers, railroads, and other features to each other and to the numerous geographic areas for which the Census Bureau tabulates data from its censuses and surveys.

Visible feature—A map feature that can be seen on the ground, such as a road, railroad track, major above-ground transmission line or pipeline, river or stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features used as boundaries for the PSAP geographic areas pose no problem in their location during field work.

Water body block group—Block group delineated coextensive with, or covering the same area as, the water body tract.

Water body tract—Type of census tract encompassing territorial seas, coastal water, the Great Lakes, or inland water at least 100 square miles in area. If an inland water body meets this criteria, each county can delineate a census tract for its portion of the water body.

**Executive Order 12866**

This notice has been determined to be not significant under Executive Order 12866.

**Paperwork Reduction Act**

This program notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Dated: April 3, 2007.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. E7–6467 Filed 4–5–07; 8:45 am]

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Federal Register

Friday,
April 6, 2007

Part IV

# Department of Education

## Institute of Educational Sciences; Notice Inviting Applications for Grants To Support Education and Special Education Research Training for Fiscal Year FY 2008; Notice

## DEPARTMENT OF EDUCATION

**[CFDA Nos. 84.305A, 84.305B, 84.305C, 84.324A, 84.324B, and 84.324C]**

## Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education and Special Education Research and Research Training for Fiscal Year (FY) 2008

**SUMMARY:** The Director of the Institute of Education Sciences (Institute) announces the Institute's FY 2008 competitions for grants to support education and special education research and research training. The Director takes this action under the Education Sciences Reform Act of 2002, title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary and adult education.

**SUPPLEMENTARY INFORMATION:**

*Mission of Institute:* A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

*Competitions in this notice:* The Institute will conduct nine research or research training competitions in FY 2008 through two of its National Education Centers.

The National Center for Education Research (NCER) will hold five competitions: two competitions for education research; two competitions for education research training; and one competition for education research and development centers.

### Education Research

Under the two education research competitions, NCER will consider only applications that address one of the following education research topics:

- Reading and Writing.
- Interventions for Struggling Adolescent and Adult Readers and Writers.
- Mathematics and Science Education.
- Teacher Quality in Reading and Writing.
- Teacher Quality in Mathematics and Science.
- Cognition and Student Learning.
- Social and Behavioral Context for Academic Learning.
- Education Technology.
- Early Childhood Programs and Policies.
- Education Leadership.
- Education Policy, Finance, and Systems.
- High School Reform.
- Postsecondary Education.

### Education Research Training

Under the first education research training competition, NCER will consider only applications for Postdoctoral Research Training; under the second competition, NCER will consider only applications for Predoctoral Research Training.

### Education Research and Development Centers

Under the education research and development centers competition, NCER will consider only applications that address one of the following education research topics:

- Cognition and Science Instruction.
- Instructional Technology.

The National Center for Special Education Research (NCSER) will hold four competitions: two competitions for special education research; one competition for special education research training; and one competition for special education research and development centers.

### Special Education Research

Under the first special education research competition, NCSER will consider only applications that address one of the following special education research topics:

- Early Intervention, Early Childhood Special Education, and Assessment for Young Children with Disabilities.
- Mathematics and Science Special Education.
- Reading, Writing, and Language Development.
- Serious Behavior Disorders.
- Individualized Education Programs and Individualized Family Service Plans.

Under the second special education research competition, NCSER will consider only applications that address one of the following special education research topics:

- Secondary and Transition Services.
- Autism Spectrum Disorders.
- Response to Intervention.
- Related Services.

### Special Education Research Training

Under the special education research training competition, NCSER will consider only applications for Postdoctoral Research Training.

### Special Education Research and Development Centers

Under the special education research and development centers competition, NCSER will consider only applications that address one of the following special education research topics:

- Serious Behavior Disorders at the Secondary Level.
- Response to Intervention in Early Childhood Special Education.

*Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

*Request for Applications and Other Information:* Information regarding program and application requirements for the competitions will be contained in the NCER and NCSER Request for Applications packages (RFA), which will be available at the following Web sites:

*http://ies.ed.gov/funding/*
*http://www.ed.gov/about/offices/list/ies/programs.html*

- The RFAs for the education research and special education research competitions will be available at these Web sites no later than April 6, 2007.
- The RFAs for the education research training and the special education research training competitions will be available at these Web sites no later than April 6, 2007.
- The RFAs for the education research and development centers and special education research and development centers competitions will be available at these Web sites no later than May 15, 2007.

Interested potential applicants should periodically check the Institute's Web site.

Information regarding selection criteria and review procedures for the competitions will be provided in the RFA packages.

*Fiscal Information:* Although Congress has not enacted a final appropriation for FY 2008, the Institute is inviting applications for these competitions now so that it may be prepared to make awards following final action on the Department's appropriations bill. The President's FY 2008 Budget for the Institute includes sufficient funding for all of the competitions included in this notice. The actual award of grants will depend on the availability of funds. The number of awards made under each competition will depend upon the quality of the applications received for that

competition. The size of the awards will depend upon the scope of the projects proposed.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 85, 86 (part 86 applies only to institutions of higher education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, 75.221, 75.222, and 75.230.

**Performance Measures**

To evaluate the overall success of its education research program, the Institute annually assesses the quality and relevance of newly funded research projects, as well as the quality of research publications that result from its funded research projects. External panels of qualified scientists review the quality of new research applications, and the percentage of newly funded projects that receive an average panel score of excellent or higher is determined. A panel of experienced education practitioners and administrators reviews descriptions of a randomly selected sample of newly funded projects and rates the degree to which the projects are relevant to educational practice. An external panel of eminent scientists reviews the quality of a randomly selected sample of new publications, and the percentage of new publications that are deemed to be of high quality is determined.

**Submission Requirements**

Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

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**.

a. *Electronic Submission of Applications.*

Applications for grants under the Education Research, Education Research Training, and Education Research and Development Centers competitions, CFDA Number 84.305A, 84.305B, and 84.305C and for grants under the Special Education Research, Special Education Research Training, and Special Education Research and Development Centers competitions, CFDA Number 84.324A, 84.324B, and 84.324C, 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 applications for the Education Research, Education Research Training, Education Research and Development Centers, Special Education Research, Special Education Research Training, and Special Education Research and Development Centers competitions at *http://www.Grants.gov*. You must search for the downloadable application package for each competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.324, not 84.324A).

*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 date and time 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 the 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 (R&R) and the other R&R forms including, Project Performance Site Locations, Other Project Information, Senior/Key Person Profile, Research and Related Budget (Total Federal + Non-federal) and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .PDF (Portable Document) format. If you upload a file type other than the file type 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 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: Elizabeth Payer, U.S. Department of Education, 555 New Jersey Avenue, NW., room 602c, Washington, DC 20208. Fax: (202) 219–1466.

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:* [Identify the CFDA number for the competition under which you are submitting an application.]), 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:* [Identify the CFDA number for the competition under which you are submitting an application.]), 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:* [Identify the CFDA number for the competition under which you are submitting an application.]), 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—if not provided by the Department—in Item 10

of the SF 424 (R&R) 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.

**FOR FURTHER INFORMATION CONTACT:** The contact person associated with a particular research competition is listed in the chart at the end of this notice and in the RFA. The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period are also listed in the chart and in the RFA that will be posted at the following Web sites:

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**Program Authority:** 20 U.S.C. 9501 *et seq.*

Dated: April 3, 2007.

**Grover J. Whitehurst,**

*Director, Institute of Education Sciences.*

**BILLING CODE 4000–01–P**

## INSTITUTE OF EDUCATION SCIENCES

FY 2008 Grant Competitions to Support Research and Research Training

| CFDA NUMBER AND NAME | APPLICATION AVAILABLE | DEADLINE FOR TRANSMITTAL OF APPLICATIONS | ESTIMATED RANGE OF AWARDS* | PROJECT PERIOD | FOR FURTHER INFORMATION CONTACT |
|---|---|---|---|---|---|
| **National Center for Education Research (NCER)** | | | | | |
| **84.305A-1 Education Research**<br>▪ Reading and Writing<br>▪ Interventions for Struggling Adolescent and Adult Readers and Writers<br>▪ Mathematics and Science Education<br>▪ Teacher Quality - Reading/Writing<br>▪ Teacher Quality - Math/Science<br>▪ Cognition and Student Learning<br>▪ Social and Behavioral Context for Academic Learning<br>▪ Education Technology<br>▪ Early Childhood Programs and Policies<br>▪ Education Leadership<br>▪ Education Policy, Finance, and Systems<br>▪ High School Reform<br>▪ Postsecondary Education | April 6, 2007 | July 26, 2007 | $100,000 to $1,200,000 | Up to 5 years | David Sweet<br>David.Sweet@ed.gov |
| **84.305B-1 Education Research Training**<br>▪ Postdoctoral Research Training | April 6, 2007 | July 26, 2007 | $160,000 to $200,000 | Up to 4 years | Robin. Harwood<br>Robin.Harwood@ed.gov |
| **84.305A-2 Education Research**<br>▪ Reading and Writing<br>▪ Interventions for Struggling Adolescent and Adult Readers and Writers<br>▪ Mathematics and Science Education<br>▪ Teacher Quality - Reading/Writing<br>▪ Teacher Quality - Math/Science<br>▪ Cognition and Student Learning<br>▪ Social and Behavioral Context for Academic Learning<br>▪ Education Technology<br>▪ Early Childhood Programs and Policies<br>▪ Education Leadership<br>▪ Education Policy, Finance, and Systems<br>▪ High School Reform<br>▪ Postsecondary Education | April 6, 2007 | November 1, 2007 | $100,000 to $1,200,000 | Up to 5 years | David Sweet<br>David.Sweet@ed.gov |
| **84.305B-2 Education Research Training**<br>▪ Predoctoral Research Training | April 6, 2007 | November 1, 2007 | $500,000 to $1,000,000 | Up to 5 years | Robin. Harwood<br>Robin.Harwood@ed.gov |

## INSTITUTE OF EDUCATION SCIENCES

FY 2008 Grant Competitions to Support Research and Research Training

| CFDA NUMBER AND NAME | APPLICATION AVAILABLE | DEADLINE FOR TRANSMITTAL OF APPLICATIONS | ESTIMATED RANGE OF AWARDS* | PROJECT PERIOD | FOR FURTHER INFORMATION CONTACT |
|---|---|---|---|---|---|
| **84.305C Education Research & Development Centers**<br>▪ Center on Cognition and Science Instruction<br>▪ Center on Instructional Technology | May 15, 2007 | November 1, 2007 | $1,000,000 to $2,000,000 | Up to 5 years | Christina Chhin<br>Christina.Chhin@ed.gov |
| **National Center for Special Education Research (NCSER)** | | | | | |
| **84.324A-1 Special Education Research**<br>▪ Early Intervention, Early Childhood Special Education, and Assessment for Young Children with Disabilities<br>▪ Mathematics and Science Special Education<br>▪ Reading, Writing, and Language Development<br>▪ Serious Behavior Disorders<br>▪ Individualized Education Programs and Individualized Family Service Plans | April 6, 2007 | July 26, 2007 | $100,000 to $1,200,000 | Up to 5 years | Kristen Lauer<br>Kristen.Lauer@ed.gov |
| **84.324A-2 Special Education Research**<br>▪ Secondary and Transition Services<br>▪ Autism Spectrum Disorders<br>▪ Response to Intervention<br>▪ Related Services | April 6, 2007 | November 1, 2007 | $100,000 to $1,200,000 | Up to 5 years | Kristen Lauer<br>Kristen.Lauer@ed.gov |
| **84.324B Special Education Research Training**<br>▪ Postdoctoral Research Training | April 6, 2007 | November 1, 2007 | $160,000 to $200,000 | Up to 4 years | Jacquelyn Buckley<br>Jacquelyn.Buckley@ed.gov |
| **84.324C Special Education Research & Development Centers**<br>▪ Center on Serious Behavior Disorders at the Secondary Level<br>▪ Center on Response to Intervention in Early Childhood Special Education | May 15, 2007 | November 1, 2007 | $1,000,000 to $2,000,000 | Up to 5 years | Kristen Lauer<br>Kristen.Lauer@ed.gov |

*These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

[FR Doc. 07–1713 Filed 4–5–07; 8:45 am]

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**Federal Register**

Vol. 72, No. 66

Friday, April 6, 2007

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## FEDERAL REGISTER PAGES AND DATE, APRIL

15597–15804 ..... 2
15805–16260 ..... 3
16261–16694 ..... 4
16695–16984 ..... 5
16985–17352 ..... 6

## CFR PARTS AFFECTED DURING APRIL

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.

**3 CFR**

**Proclamations:**
8119 ..... 16255
**Administrative Orders:**
**Notices:**
Notice of March 30, 2007 ..... 15803
Notice of April 1, 2007 ..... 16259

**5 CFR**

2634 ..... 16985
2635 ..... 16985
2636 ..... 16985

**7 CFR**

301 ..... 15597
319 ..... 15805
915 ..... 16261
922 ..... 16263
926 ..... 16265
1207 ..... 16267
**Proposed Rules:**
959 ..... 17037
3560 ..... 16730

**10 CFR**

300 ..... 15598
**Proposed Rules:**
50 ..... 16731

**11 CFR**

104 ..... 16695
111 ..... 16695

**12 CFR**

204 ..... 16987
611 ..... 16699
612 ..... 16699
614 ..... 16699
615 ..... 16699
618 ..... 16699
619 ..... 16699
620 ..... 16699
630 ..... 16699
652 ..... 15812
655 ..... 15812
915 ..... 15600
**Proposed Rules:**
40 ..... 16875
216 ..... 16875
332 ..... 16875
573 ..... 16875
716 ..... 16875
915 ..... 15627

**14 CFR**

39 ..... 15603, 15812, 15814, 15816, 15818, 15820, 15822, 16699, 16701, 16703, 16990, 16998
71 ..... 15824, 15825, 16707, 16708, 16709, 16710
91 ..... 16710
97 ..... 15825
401 ..... 17001
404 ..... 17001
405 ..... 17001
406 ..... 17001
413 ..... 17001
415 ..... 17001
420 ..... 17001
431 ..... 17001
437 ..... 17001
**Proposed Rules:**
39 ..... 15633, 15635, 15850, 16287, 16289, 16741, 16744, 16747, 16749, 17042, 17045

**15 CFR**

303 ..... 16712

**16 CFR**

**Proposed Rules:**
313 ..... 16875

**17 CFR**

140 ..... 16269
145 ..... 16269
200 ..... 16934
232 ..... 16934
240 ..... 16934
249 ..... 16934
**Proposed Rules:**
1 ..... 15637
3 ..... 15637
4 ..... 15637
15 ..... 15637
160 ..... 16875
166 ..... 15637
248 ..... 16875

**18 CFR**

40 ..... 16416
101 ..... 16716

**20 CFR**

404 ..... 16720
416 ..... 16720

**21 CFR**

520 ..... 16270
558 ..... 16270
866 ..... 15828
**Proposed Rules:**
179 ..... 16291

**22 CFR**

126 ..... 15830

**24 CFR**

92 ..... 16678
234 ..... 16688

**26 CFR**

1 ....16878
11 ....16878

**28 CFR**

500 ....16271
501 ....16271

**30 CFR**

**Proposed Rules:**
291 ....17047

**31 CFR**

538 ....15831
560 ....15831

**33 CFR**

100 ....15832, 17024
165 ....15834, 15837, 16275, 16726, 17024

**Proposed Rules:**
100 ....17062
117 ....15852, 16752, 17065
165 ....16754

**36 CFR**

**Proposed Rules:**
261 ....15641

**37 CFR**

**Proposed Rules:**
202 ....16306

**38 CFR**

4 ....16728
21 ....16962

**39 CFR**

20 ....16604

**40 CFR**

52 ....15839
62 ....17025
174 ....16277
180 ....16281
261 ....17027

**Proposed Rules:**
62 ....17068
63 ....16636
92 ....15938
94 ....15938
152 ....16312
156 ....16312
167 ....16312
168 ....16312
169 ....16312
172 ....16312
174 ....16312
180 ....17068
1033 ....15938
1039 ....15938
1042 ....15938
1065 ....15938
1068 ....15938

**41 CFR**

**Proposed Rules:**
102-38 ....15854

**46 CFR**

501 ....15613

**47 CFR**

73 ....16283

**Proposed Rules:**
73 ....16315

**49 CFR**

23 ....15614
26 ....15614
571 ....17236
585 ....17236
1002 ....17032

**Proposed Rules:**
1300 ....16316
1313 ....16316

**50 CFR**

17 ....16284
622 ....15617
679 ....15848

**Proposed Rules:**
17 ....15857, 16756
300 ....17071
635 ....16318
648 ....17076, 17085

## 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 APRIL 6, 2007

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Processed fruits, vegetables, and other processed products; inspection and certification fees; published 3-7-07

**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Energy conservation:
- Commercial and industrial equipment; energy efficiency program—
  - Commercial heating, air-conditioning, and water heating equipment standards; published 3-7-07

**ENVIRONMENTAL PROTECTION AGENCY**

Solid wastes:
- Hazardous waste; identification and llisting—
  - Exclusions; published 4-6-07

Superfund program:
- National oil and hazardous substances contingency plan priorities list; published 3-7-07

**GENERAL SERVICES ADMINISTRATION**

Federal Management Regulation:
- Personal property disposition; published 3-7-07

**LABOR DEPARTMENT**

**Employee Benefits Security Administration**

Employee Retirement Income Security Act:
- Domestic relations orders; time and order of issuance; published 3-7-07

**TRANSPORTATION DEPARTMENT**

**Federal Railroad Administration**

Practice and procedure:
- Direct final rulemaking procedures; expedited processing of noncontroversial changes; published 3-7-07

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Nectarines and peaches grown in California; comments due by 4-13-07; published 3-29-07 [FR E7-05789]

Tomatoes grown in Florida; comments due by 4-9-07; published 2-6-07 [FR 07-00502]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:
- Czech Republic et al.; live swine, swine semen, pork, and pork products; comments due by 4-13-07; published 2-12-07 [FR E7-02327]

Plant-related quarantine, domestic:
- Pine shoot beetle; comments due by 4-13-07; published 2-12-07 [FR E7-02325]

**BROADCASTING BOARD OF GOVERNORS**

Legal proceedings; testimony by employees, production of official records, and disclosure of official information; comments due by 4-11-07; published 3-12-07 [FR E7-04329]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - South Atlantic Fishery Management Council; hearings; comments due by 4-10-07; published 3-2-07 [FR E7-03703]
- Northeastern United States fisheries—
  - Georges Bank cod, haddock, and yellowtail flounder; comments due by 4-11-07; published 3-12-07 [FR E7-04442]

**DEFENSE DEPARTMENT**

**Defense Acquisition Regulations System**

Acquisition regulations:
- Online Representations and Certifications Application; comments due by 4-13-07; published 2-12-07 [FR E7-02205]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution; standards of performance for new stationary sources:
- Hospital, medical, and infectious waste incinerators; comments due by 4-9-07; published 2-6-07 [FR E7-01617]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Missouri; comments due by 4-9-07; published 3-9-07 [FR E7-04297]

Air quality implementation plans:
- Preparation, adoption, and submittal—
  - Plan submission methods and public hearing requirements; revisions and administrative changes; comments due by 4-12-07; published 3-13-07 [FR E7-04563]

Air quality implementation plans; approval and promulgation; various States:
- Iowa; comments due by 4-9-07; published 3-8-07 [FR E7-04179]
- Kansas; comments due by 4-9-07; published 3-9-07 [FR E7-04304]
- Missouri; comments due by 4-9-07; published 3-9-07 [FR E7-04176]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Missouri; comments due by 4-9-07; published 3-9-07 [FR E7-04300]

Air quality implementation plans; approval and promulgation; various States:
- Nevada; comments due by 4-11-07; published 3-12-07 [FR E7-04428]
- New Jersey; comments due by 4-13-07; published 3-14-07 [FR E7-04665]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Tris (2-ethylhexyl) phosphate; comments due by 4-9-07; published 2-7-07 [FR 07-00460]

Superfund program:
- National oil and hazardous substances contingency plan priorities list; comments due by 4-12-07; published 3-13-07 [FR E7-04449]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Human drugs:
- Labeling of drug products (OTC)—
  - Standardized format and content requirements; convenience-size drug packets; alternative labeling requirements; comments due by 4-11-07; published 12-12-06 [FR E6-21019]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Anchorage regulations:
- New York; comments due by 4-9-07; published 2-6-07 [FR E7-01882]
- Virginia; comments due by 4-9-07; published 3-8-07 [FR E7-04111]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
- Severn River and College Creek, Annapolis, MD; comments due by 4-13-07; published 2-12-07 [FR E7-02334]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:
- Critical habitat designations—
  - Flatwoods salamander; comments due by 4-9-07; published 2-7-07 [FR 07-00470]
  - Nevin's barberry; comments due by 4-9-07; published 2-6-07 [FR 07-00472]
- Findings on petitions, etc.—
  - Polar bear; comments due by 4-9-07; published 1-9-07 [FR 06-09962]
  - Polar bear; comments due by 4-9-07; published 2-15-07 [FR 07-00723]
- Gray wolf; comments due by 4-9-07; published 2-8-07 [FR 07-00487]

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:
- Maryland; comments due by 4-9-07; published 3-8-07 [FR E7-04147]

**JUSTICE DEPARTMENT**

Grants and agreements:

Nonprocurement debarment and suspension; OMB guidance; implementation; comments due by 4-12-07; published 3-13-07 [FR E7-04362]

**LABOR DEPARTMENT**

**Employee Benefits Security Administration**

Employee Retirement Income Security Act:

Cross-trading of securities; statutory exemption; comments due by 4-13-07; published 2-12-07 [FR E7-02290]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Air Tractor, Inc.; comments due by 4-9-07; published 2-6-07 [FR E7-01874]

Airbus; comments due by 4-12-07; published 3-13-07 [FR E7-04534]

British Aerospace; comments due by 4-12-07; published 3-13-07 [FR E7-04518]

Empresa Braileira de Aeronautica S.A. (EMBRAER); comments due by 4-9-07; published 3-8-07 [FR E7-04128]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 4-11-07; published 3-12-07 [FR E7-04373]

Fokker; comments due by 4-11-07; published 3-12-07 [FR E7-04379]

McDonnell Douglas; comments due by 4-9-07; published 2-22-07 [FR E7-02975]

REIMS AVIATION S.A.; comments due by 4-9-07; published 3-8-07 [FR E7-04131]

Vulcanair S.p.A.; comments due by 4-9-07; published 3-9-07 [FR E7-04242]

Class B airspace; comments due by 4-13-07; published 2-12-07 [FR 07-00599]

Class E airspace; comments due by 4-9-07; published 2-23-07 [FR E7-03050]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Child restraint systems—

Lower anchors and tethers for children; system designs, child side impact safety, and public education; public meeting; comments due by 4-9-07; published 1-24-07 [FR E7-01021]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Qualified film and television production costs deduction; cross-reference; comments due by 4-10-07; published 2-9-07 [FR E7-02153]

Procedure and administration:

Lien or discharge of property release; comments due by 4-11-07; published 1-11-07 [FR E7-00219]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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**H.R. 1129/P.L. 110–16**

To provide for the construction, operation, and maintenance of an arterial road in St. Louis County, Missouri. (Mar. 28, 2007; 121 Stat. 71)

**Last List March 27, 2007**

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